A

REPORT

OF THE

TRIAL

OF

PETER FINERTY,

UPON AN

INDICTMENT FOR A LIBEL.

BY WILLIAM RIDGEWAY, ESQ.

BARRISTER AT LAW.

DUBLIN:

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1798.

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Rec. May 15, 1900.

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OF THE

Trial for a Libel.

COMMISSION.

Friday, December 23d, 1797.

Judge: The *Hon.* WILLIAM DOWNES.

The Grand Jury of the city of Dublin at the laſt Commiſſion found the following Bill of Indictment againſt *Peter Finerty*, upon which he was then arraigned:—

County of the City of Dublin, to wit. } THE Jurors for our Lord the King upon their oath ſay and preſent, that at a general gaol delivery holden at *Carrickfergus*, in and for the county of *Antrim*, in the 37th year of the reign of our ſaid Lord the King, before the *Honorable* MATHIAS FINUCANE, one of the Juſtices of his Majeſty's Court of *Common Pleas* in *Ireland*, and the *Honorable* DENIS GEORGE, one of the Barons of his Majeſty's Court of

Exchequer in *Ireland*, Juſtices and Commiſſioners of our ſaid Lord the King, aſſigned to deliver the gaol of our ſaid Lord the King in and for the county of *Antrim* of the ſeveral priſoners and malefactors therein, one *William Orr*, late of *Farranſhane*, in the ſaid county of *Antrim*, yeoman, was in lawful manner indicted, for unlawfully adminiſtering a certain oath and engagement upon a book to one *Hugh Wheatly*, which oath and engagement imported to bind the ſaid *Hugh Wheatly*, who then and there took the ſame, to be of an aſſociation, brotherhood, and ſociety, formed for ſeditious purpoſes; and alſo for felonioufly cauſing, procuring, and ſeducing the ſaid *Hugh Wheatly*, to take an oath of the ſaid import laſt mentioned; and alſo for felonioufly adminiſtering to the ſaid *Hugh Wheatly* another oath, importing to bind the ſaid *Hugh Wheatly* not to inform or give evidence againſt any brother aſſociate, or confederate of a certain ſociety then and there formed, and alſo for felonioufly cauſing, procuring, and ſeducing the ſaid *Hugh Wheatly* to take an oath of the import laſt mentioned. And afterwards, to wit, at *Carrickfergus* aforeſaid, in the county of *Antrim* aforeſaid, before the *Right Honorable* BARRY *Lord* YELVERTON, Lord Chief Baron of his Majeſty's Court of *Exchequer* in *Ireland*, and the *Honorable* TANKERVILLE CHAMBERLAIN, one of his Majeſty's Juſtices of his Court of *Chief Place* in *Ireland*, at a general gaol delivery holden at *Carrickfergus* aforeſaid, Juſtices and Commiſſioners, &c. on the 16th day of *September*, in the 37th year of the reign of our ſaid Lord the King, the ſaid *William Orr*, by the verdict of a certain Jury of the ſaid county of *Antrim*, between our ſaid Lord the King and the ſaid *William Orr* taken, of and for the felony or felonies aforeſaid, in due manner was tried, convicted, and attainted, and for the ſame was duly executed; and that one *Peter Finerty*, late of *Mountrath ſtreet*, in the city and county of the city of *Dublin*, printer, well knowing the premiſes, but being a wicked, ill diſpoſed perſon, and of unquiet converſation and diſpoſition, and deviſing and intending to moleſt and diſturb the peace and public tranquillity of this kingdom of *Ireland*, and to bring and draw the trial aforeſaid, with the verdict thereon for our ſaid Lord the King againſt the ſaid *William Orr* given, and the due courſe of law in that behalf as aforeſaid had, into hatred and contempt and ſcandal with all the liege ſubjects of our ſaid Lord the King, and to perſuade and cauſe

cauſe the ſubjects of our ſaid Lord the King to believe that the trial aforeſaid was unduly had, and that the ſaid *William Orr* did undeſervedly die in manner aforeſaid, and that his Excellency JOHN JEFFERIES *Earl* CAMDEN, the Lord Lieutenant of this kingdom, after the conviction aforeſaid, ought to have extended to the ſaid *William Orr* his Majeſty's gracious pardon of the felony or felonies aforeſaid, and that in not ſo extending ſuch pardon he the ſaid Lord Lieutenant had acted inhumanly, wickedly, and unjuſtly, and in a manner unworthy of the truſt committed to him by our ſaid Lord the King in that behalf, and that the ſaid Lord Lieutenant in the government of this kingdom had acted unjuſtly, cruelly, and oppreſſively to his Majeſty's ſubjects therein, and to fulfil and bring to effect his moſt wicked and deteſtable devices and intentions aforeſaid, on the ſaid 26th day of *October*, in the 37th year of the reign of our ſaid Lord the King, at *Mountrath-ſtreet* aforeſaid, in the city and county of the city of *Dublin* aforeſaid, with force and arms falſely, wickedly, maliciouſly, and ſeditiouſly did print and publiſh, and did cauſe and procure to be printed and publiſhed, in a certain newſpaper entitled "*The Preſs*," a certain falſe, wicked, malicious, and ſeditious libel, of and concerning the ſaid trial, conviction, attainder, and execution of the ſaid *William Orr* as aforeſaid, and of and concerning the ſaid Lord Lieutenant and his Government of this kingdom, and his Majeſty's Miniſters employed by him in his Goverment of this kingdom, according to the tenor and effect following, to wit: "The death of Mr. *Orr* (meaning the ſaid exe-"cution of the ſaid *William Orr*) the nation has pro-"nounced one of the moſt ſanguinary and ſavage acts, "that had diſgraced the laws. In perjury, did you not "hear, my Lord, (meaning the ſaid Lord Lieutenant) "the verdict (meaning the verdict aforeſaid) was given? "Perjury accompanied with terror, as terror has marked "every ſtep of your Government (meaning the Govern-"ment of this kingdom aforeſaid by the ſaid Lord Lieu-"tenant) vengeance and deſolation were to fall on thoſe "who would not plunge themſelves in blood: theſe were "not ſtrong enough againſt the expreſs law of the land. "Not only was drink introduced to the Jury (meaning "the Jury aforeſaid) but drunkenneſs itſelf, beaſtly and "criminal drunkenneſs, was employed to procure the "murder of a better man (meaning the execution of the

"ſaid

" ſaid *William Orr*) than any that now ſurrounds you " (meaning the ſaid Lord Lieutenant.")

And in another part thereof, according to the tenor and effect following, to wit: " Repentance, which is a ſlow " virtue, haſtened however to declare the innocence of " the victim, (meaning the ſaid *William Orr*) the miſchief " which perjury had done (meaning the ſaid conviction of " the ſaid *William Orr*) truth now ſtept forward to repair; " neither was ſhe too late, had humanity formed any part " of your counſels, (meaning the counſels of the ſaid " Lord Lieutenant) ſtung with remorſe on the return of " reaſon, part of his Jury (meaning the Jury aforeſaid) " ſolemnly and ſoberly made oath, that their verdict " (meaning the verdict aforeſaid) had been given under " the unhappy influence of intimidation and drink, and in " the moſt ſerious affidavit that ever was made, by ac- " knowledging their crime, endeavoured to atone to God, " and to their country, for the ſin into which they had " been ſeduced."

And in another part thereof according to the tenor and effect following, to wit: "and though the innocence of the accuſ- " ed (meaning the ſaid *William Orr*) had even remained " doubtful, it was your duty (meaning the duty of the " ſaid Lord Lieutenant) my Lord, and you (meaning the " ſaid Lord Lieutenant) had no exemption from that duty, " to have interpoſed your arm, and ſaved him (meaning the " ſaid *William Orr*) from the death (meaning the execu- " tion aforeſaid) that perjury, drunkenneſs, and reward, " had prepared for him (meaning the ſaid *William Orr*) let " not the nation be told that you (meaning the ſaid Lord " Lieutenant) are a paſſive inſtrument in the hands of " others. If paſſive you be, then is your office a ſhadow " indeed: if an active inſtrument as you ought to be, you " (meaning the ſaid Lord Lieutenant) did not perform the " duty, which the laws required of you, (meaning the ſaid " Lord Lieutenant) you did not exerciſe the prerogative " of mercy;—that mercy, which the conſtitution had en- " truſted to you, (meaning the ſaid Lord Lieutenant) for " the ſafety of the ſubject, by guarding him from the op- " preſſion of wicked men, innocent it appears he (mean- " ing the ſaid *William Orr*) was; his blood (meaning the " blood of the ſaid *William Orr*) has been ſhed, and the " precedent indeed is awful."

And

And in another part thereof according to the tenor and effect following, to wit: " but ſuppoſing the evidence of " *Wheatly* had been true, what was the offence of Mr. *Orr?* " (meaning the ſaid *William Orr*) not that he had taken an " oath of blood and extermination, for then he had not " ſuffered, but that he (meaning the ſaid *William Orr*) had " taken an Oath of Charity, and of Union; of Humanity " and of Peace; he (meaning the ſaid *William Orr*) has " ſuffered; ſhall we be then told that your Government " (meaning the Government of this kingdom aforeſaid by " the ſaid Lord Lieutenant) will conciliate public opinion, " or that the people will not continue to look for a " better?"

And in another part thereof according to the tenor and effect following, that is to ſay: "Is it to be wondered, that " a ſucceſſor of Lord *Fitzwilliam* ſhould ſign the death-" warrant of Mr. *Orr?* (meaning the ſaid *William Orr*) " Mr. *Pitt* had learned, that a merciful Lord Lieutenant " was unſuited to a Government of violence; it was no " compliment to the native clemency of a *Camden*, that he " ſent you (meaning the ſaid Lord Lieutenant) into *Ireland*, " and what has been our portion under the change, but " maſſacre and rape, military murders, deſolation and " terror."

And in another part thereof according to the tenor and effect here following, that is to ſay: " feaſting in your " Caſtle, in the midſt of your Myrmidons and Biſhops, " you (meaning the ſaid Lord Lieutenant) little concerned " yourſelf about the expelled and miſerable cottager, whoſe " dwelling at the moment of your mirth was in flames, " his wife and his daughter then under the violation of " ſome commiſſioned ravager, his ſon agonizing on the " bayonet, and his helpleſs infants crying in vain for mercy: " theſe are lamentations, that ſtain not the hour of carouſal " under intoxicated Counſels; (meaning the Counſels of " the ſaid Lord Lieutenant) the conſtitution has reeled to " its centre, juſtice herſelf is not only blind drunk, but " deaf like *Feſtus*, to the words of ſoberneſs and truth."

And in another part thereof according to the tenor and effect following, to wit: " Let however the awful execu-" tion of Mr. *Orr* (meaning the execution aforeſaid of " the ſaid *William Orr*) be a leſſon to all unthinking ju-" ries, and let them ceaſe to flatter themſelves that the " ſobereſt recommendation of theirs, and of the preſid-

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" ing judge, can ſtop the courſe of carnage, which ſan-
" guinary and I do not fear to ſay unconſtitutional laws have
" ordered to be looſed. Let them remember, that like
" *Macbeth*, the ſervants of the Crown have waded ſo far
" in blood that they find it eaſier to go on than to go
" back." In contempt of our ſaid Lord the King and his laws, and againſt the peace of our ſaid Lord the King, his Crown and Dignity.

There was a ſecond count ſtating merely the firſt paragraph of the publication.—A third count ſtating the ſecond—and a fourth count ſtating the third paragraph.

The defendant traverſed this indictment, and being this day brought to the bar, the following Jury was ſworn;

James Blacker.	James Atkinſon,
Benjamin Richardſon,	William Cowan,
John Dickinſon,	Bladen Swiny,
William Dickinſon,	Mark Bloxham,
William Taylor,	William Williams,
Michael Nixon,	James King.

To whom he was given in charge.

Mr. TOWNSEND opened the indictment.

Mr. ATTORNEY GENERAL. *My Lord, and Gentlemen of the Jury.* By the command of Government, I proſecute the Priſoner, upon an indictment found by the Grand Jury of this City, for printing and publiſhing a falſe and ſeditious libel:—the Priſoner has pleaded *Not Guilty*, and it is your duty, upon the evidence which will be given, and upon the evidence ariſing from the paper charged to be a libel, to determine two queſtions:—One a queſtion of fact, " whether the Priſoner at the bar be guilty of publiſhing the paper?"—and the other, " whether the paper itſelf be a ſeditious libel?"—This ſecond queſtion you will determine upon a careful peruſal, and examination of the paper. Previouſly however hearing, as the late ſtatute requires, from the learned Judge his opinion whether the paper be a libel or not.

Gentlemen, the crime with which the Priſoner ſtands charged is a mere miſdemeanor; yet I muſt take leave to ſay, that no Jury in modern days has been aſſembled upon a caſe of more importance to the community, than that which is now before you for your conſideration.

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The charge againſt the Priſoner, is that of publiſhing a libel on the adminiſtration of juſtice—in order to render the Judges and the adminiſtration of juſtice contemptible and odious in the eyes of the people—A libel of the moſt dangerous tendency:—Were the object of the writer to be attained, the neceſſary conſequence muſt be, the total ſubverſion of ſocial order and the deſtruction of Government.

I may lay it down as a maxim, obvious to the underſtanding of thoſe who have thought, and indeed to thoſe who have not thought upon the ſubject, that when a reſpect for the adminiſtration of juſtice is gone, every thing valuable is gone—Vain are laws and government when the People are taught to believe, that thoſe laws are executed in tyranny and corruption.

The libel with the publication of which the Priſoner ſtands charged was printed on the 26th of *October* laſt, in a Newſpaper publiſhed in the City of *Dublin*, under the title of *The Preſs*.—It would but ill become me here to ſtate facts not immediately pertaining to the cauſe before you, and ſtill leſs would it become me (if I were capable of it) to ſtate any thing in a caſe of ſuch vaſt importance to the Community that could affect yonr paſſions.—However, ſomething prefatory I muſt ſay upon this paper, of which the man at the bar having on his oath avowed himſelf to be the ſole proprietor and publiſher, I can have no uneaſineſs in ſtating.

This Newſpaper was publiſhed for the firſt time upon the 17th of *September* in the preſent year. An act of Parliament, in order to preſerve the freedom of the Preſs by reſtraining its licentiouſneſs—in order to protect the government of the country from ſeditious publications—in order to protect individuals from ſlander and defamation—requires that any man publiſhing a Newſpaper ſhall make an affidavit, ſtating the names of the Proprietors and Printers, and that a copy of every days publication ſigned by the publiſher ſhall be delivered at the Stamp-office, in order that the publiſher may be reſponſible to the government or the individual againſt whom he may offend, and that there may be evidence of the fact of publication.

On the 17th of *September*, the Priſoner made an affidavit purſuant to the ſtatute, by which he ſwore, that he was the ſole proprietor, printer and publiſher of the paper titled *The Preſs*—and from that day to the preſent he has

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continued the ſole proprietor of the paper ſtiled *The Preſs*. —This paper has been circulated through the kingdom with unexampled induſtry, and manifeſtly appears to arreſt the attention of a Government, and of every man, who has any regard for life, liberty, property, or the ancient inſtitutions under which we are governed. I ſhall not go into its general and ſyſtematic tendency; I ſhall make ſuch obſervations merely as apply to the caſe before you. No man, who has read *The Preſs*, and deliberately examined the ſeries of papers, can fail to ſee that one of its great objects is to deſtroy the credit of the adminiſtration, by making the People believe, that the Judges, and the Jurors, and all the Miniſters of Juſtice are corrupt, and that a pure and equal juſtice is not adminiſtered.

I heſitate not to aver, that *The Preſs* diſcloſes ſuch a ſyſtem, and the publication now before you is only a part of that ſyſtem, which runs through all the papers. I ſhall preſently ſtate the parts of the libel; but let me obſerve, however common-place it may be, that in performing your duty, you are called upon to protect the liberty of the preſs—that liberty of the preſs, which, while it is preſerved, will preſerve the freedom and conſtitution of this country.—The freedom of the preſs can only be deſtroyed by its licentiouſneſs, and never was there a moment in which that liberty was in more danger, never was licentiouſneſs more extravagant.

Gentlemen, the indictment in this caſe does ſtate as a matter of fact, in order to enable you to underſtand the nature of the libel itſelf, that a man of the name of *William Orr* was indicted at the aſſizes in the county of *Antrim*, at Spring aſſizes, 1797, for adminiſtering an unlawful oath contrary to the ſtatute, to a perſon of the name of *Wheatly*, to be of a Society formed for ſeditious purpoſes, and binding him not to give evidence againſt any of his brethern of that Society; and the indictment further alleges, that upon the 16th of *September* in the ſame year, *William Orr* was tried, and convicted, before the then Judges of General Gaol Delivery, *Lord* YELVERTON, and Mr. *Juſtice* CHAMBERLAIN—The indictment then charges, that the Priſoner at the bar, *Peter Finerty*, in order to bring into contempt the adminiſtration of juſtice in this kingdom, and to cauſe it to be believed that *Orr* undeſervedly ſuffered death, and that he ought to have received his Majeſty's pardon; and that his Excellency the LORD LIEUTENANT acted unjuſtly, inhumanly,

inhumanly, cruelly, and oppreſſively; and withheld his Majeſty's pardon from the ſaid *Orr*,—did publiſh this, and then the indictment ſets forth thoſe parts of the libel, that are particularly relied upon.——Gentlemen, you will, after the evidence ſhall have been gone into, have an opportunity of viewing the whole of the libel. The indictment ſtates only particular parts; but in the conſideration of thoſe particular parts, it will be your duty to take the whole together, and ſee whether the whole has that for its object, which the indictment charges.

The indictment ſtates, that this libel was publiſhed, of and concerning the trial, the attainder, and execution of *William Orr*, and of and concerning the LORD LIEUTENANT of *Ireland*, and the Miniſters employed by the King in the government of this kingdom. I forbear to ſtate any of thoſe circumſtances, that attended the trial of *William Orr*, however deſirous I may be that every circumſtance attending that caſe ſhould be made public, becauſe I do not conceive ſuch a ſtatement to be proper upon the preſent occaſion.

Gentlemen, the libel imports to be a letter to the LORD LIEUTENANT publiſhed ſoon after the execution of *William Orr*, and it contains this paragraph: ——

" The death of Mr. *Orr* the nation has pronounced " one of the moſt ſanguinary and ſavage acts that had diſ- " graced the laws.—In perjury, did you not hear my Lord, " the verdict was given—perjury accompanied with terror, " as terror has marked every ſtep of your Government.— " Vengeance and deſolation were to fall on thoſe who " would not plunge themſelves in blood. Theſe were not " ſtrong enough againſt the expreſs law of the land—not " only was drink introduced to the Jury, but drunkenneſs " itſelf—beaſtly, and criminal drunkenneſs, was employed " to procure the murder of a better man than any that ſur- " rounds you."

Gentlemen, is it poſſible to conceive any good motive whatever, that could have induced any man to have publiſhed that ſentence?—It is not applicable to any queſtion to be diſcuſſed, as a matter of theory by the public—it is not expreſſed in any terms, but ſuch as muſt tend to excite the people to reſentment—to bring the Government into contempt with them. It expreſsly ſays, that the execution of *Orr* was the moſt ſanguinary and ſavage act that diſgraced the laws—founded in drunkenneſs, and perjury—

it imports that drunkenneſs was employed, and perjury procured to obtain the verdict againſt *Orr!*—If any man—if the ingenious counſel who ſhall appear preſently upon the part of the Priſoner, can by the force of imagination put a ſenſe upon this paragraph other than ſuch as is calculated to excite the paſſions of the people upon topics not for their diſcuſſion, let him ſuggeſt it, and let the Priſoner have the benefit of it—I am not able to find any ſenſe by which diſcuſſion can be advanced—or any other than the moſt ſhameful and baſe charge againſt the ſervants of the State—that the government do exerciſe acts that diſgrace the baſeſt of the baſe, in order to have innocent men convicted by form of law—that the LORD LIEUTENANT and the King's Miniſters, in order to obtain a ſanguinary and ſavage execution of an innocent ſubject, have contrived to have drunkenneſs introduced into the Jury box, under the eye of the Judges.

Gentlemen, another paſſage that has been ſelected out of this libel is this—" Repentance which is a ſlow virtue haſtened however to declare the innocence of the victim—the miſchief which perjury had done, truth now ſtept forward to repair—neither was ſhe too late, had humanity formed any part of your counſels. Stung with remorſe on the return of reaſon, part of his Jury ſolemnly, and ſoberly made oath, that this verdict was given under the unhappy influence of intimidation and drink, and in the moſt ſerious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God, and to their country, for the ſin into which they had been ſeduced"—Here again, government or the Lord Lieutenant is charged with inhumanity, in ſuffering a ſentence to be executed, after it clearly appeared, from affidavits the moſt ſerious and ſolemn, that the condemned perſon was innocent.—Gentlemen, mercy is in the diſcretion of the Crown—it muſt be upon due deliberation of the propriety of extending it (if it be extended) that it is to be granted.—Now, to what end, or purpoſe was this paragraph introduced? Could the writer of the libel know upon what ground it was, that that royal clemency, which is ever ready to be extended to thoſe who are objects of it, was refuſed to be extended in this caſe?—To what end was this laboured paragraph compoſed? Was it to remedy what had happened? To what end was it circulated through the country?—To excite contempt againſt

againſt the adminiſtration of Juſtice, and to madden the people by falſe repreſentations againſt the government.

It is ſtated that ſolemn affidavits were made—With regard to affidavits, if they were ſuch as it was competent to the Judges to attend to, we muſt ſuppoſe they were attended to.—If others were made, the writer could not be acquainted with them. He might have known of ſome affidavits—but he could not know what affidavits were laid before the Lord Lieutenant—and not knowing them, he dared to hazard the peace of his country, by making an impreſſion, by pretending to ſtate tranſactions, which he was ignorant of.

Gentlemen, it is not for me to enter into an enquiry of the truth of the facts; but I muſt ſay, that it is contrary to the principles of law, under which you are governed, to ſay, that a verdict of twelve men upon oath is not to be attended to, becauſe one or two of them ſhall after the trial is over, be found contrary to their oath to ſtate, that they are not ſatisfied with it.—I ſay this incidentally; we have nothing to do with it upon the preſent trial.

Another part of the publication is—" And though the " the innocence of the accuſed"—calling him *innocent*, who had been found guilty upon the oaths of twelve men.—" And though the innocence of the accuſed had even re- " mained doubtful, it was your duty, my Lord, and you " had no exemption from that daty, to have interpoſed " your arm, and ſaved him from the death that perjury, " drunkenneſs, and REWARD had prepared for him.—" Let not the nation be told, that you are a paſſive inſtru- " ment in the hands of others. If paſſive you be, then " is your office a ſhadow indeed. If an active inſtru- " ment as you ought to be, you did not perform the duty, " which the laws required of you—You did not exer- " ciſe the prerogative of mercy—that mercy which the " conſtitution had entruſted to you, for the ſafety of the " ſubject, by guarding him from the oppreſſion of wicked " men—Innocent it appears he was—his blood has been " ſhed, and the precedent is awful"—Here you ſee this libeller has dared to aſſert in the face of the world, that a man tried according to the laws of his country, whoſe caſe was deliberated upon after repeated reſpites,—that he was an *innocent* man, and that the verdict was obtained againſt him by drunkenneſs, terror, and *reward!*—Though this libeller, prompt as he was, to ſay every thing falſe and ſeditious,

ditious, ſtates the affidavits which he pretends were made, he does not ſo much as aſſert, that the affidavits charge, that *reward* was given to procure the conviction; yet here he ſtates, that it was obtained by drunkenneſs, terror, and reward!—Can any man in this Court, if ſuch there be, wiſhing to cloath ſedition with any thing they can make appear tolerable—is there any man who will dare to ſay, it is not libellous to aſſert, that a verdict has been obtained by reward?—I do not believe, that in this country, or in *Great Britain*, ſince the period, when our conſtitution was eſtabliſhed, any man has dared to inſinuate, or thought, that the verdict of a jury in a criminal caſe has been obtained by reward offered, or given:—And I do in my ſoul believe, that the author of this libel, felt in the act of writing, that he was writing that, which was falſe, and groundleſs—If I dared to make an appeal of the ſort, or if it became me, I would appeal to the people of the county of *Antrim*, who ſurrounded the Court—to the people aſſembled in the ſtreets, to the friends of *Orr*—to the favourers of his party, and aſk them, even at the hazard of the preſent proſecution, whether a man among them believed, or could be perſuaded to believe, that the verdict was obtained by reward offered, held out, or given?—If this then be not a libel upon the adminiſtration of juſtice, I know not what a libel is—and if it be not found ſo, let the ſcales of juſtice fall from the hands of the Judges—and yield up all you poſſeſs to a miſled and diſtracted multitude—To ſay, that a man, tried with all the advantages the law allows to Priſoners charged capitally and found guilty, was ſacrificed, died innocent, and ſuffered by a verdict obtained by reward from the executive government!—If a jury can upon their oaths find this not to be a libel, it will be time for the good and the induſtrious to abandon their country, and to ſeek protection for their lives and properties in ſome happier ſtate, where government will be protected againſt calumny, and where there is a reſpect for the adminiſtration of juſtice.

Gentlemen, though I ſpeak thus warmly, I mean not to excite your paſſions againſt the Priſoner; I ſpeak of the offence, whether the Priſoner be guilty, you are to judge upon the evidence which ſhall be given in proof of the publication—It is impoſſible for any man, who has the the ſmalleſt regard for his family, his friends or his country,

to

to read this libel, without feeling himſelf animated beyond the ordinary degree of temper; of warmth, in ſuch a moment I am not aſhamed;—it is ſuch as ſhould animate a man performing the moſt ſacred duty that can be diſcharged.

The next paragraph, Gentlemen, which has been ſelected—and if one requires attention more than another, it is this—"But ſuppoſing the evidence of *Wheatly* had been "true, what was the offence of Mr. *Orr?* Not that he "had taken an oath of blood and extermination, for then "he had not ſuffered—but that he had taken an oath of "Charity and of union—of humanity, and of peace"—This is a libel of a new ſpecies—firſt, to tell the world, that *Orr* was not guilty of the offence charged upon him—admitting it an offence, we tell the world, that the Jury who convicted him were drunk—were terrified—were bribed—But then we ſay, ſuppoſing all that was ſworn to be true, we tell the people, that he ſuffered death, for taking an oath of charity and of union—Inſinuating to the people, that that brotherhood, to which this caſe is ſo nearly related, is a brotherhood of charity, inſtituted for the benefit of mankind!

Now, Gentlemen, you will obſerve, that the crime with which this man was charged, was not merely *adminiſtering* an unlawful oath, but of adminiſtering an oath to be of a ſociety formed *for ſeditious purpoſes.* The writer of the libel, while he wrote the paragraph which I have laſt read, knew he was guilty of deceit.—When a man knowingly ſends a falſehood to the world he muſt do it for ſome purpoſe—To what purpoſe this was done, aſk yourſelves when you retire.—This writer tells the public, that a man ſuffered death for a crime with which he was not accuſed, or rather for a fact of which he was innocent—The writer knew very well the crime with which the man was charged—He ſuppreſſes the truth, leſt if he told the truth the people would not be ſufficiently diſcontented.—The crime for which he ſuffered was not for adminiſtering an oath ſimply, and *per ſe*, but an oath to be of a ſociety *formed for ſeditious purpoſes*—It muſt have been charged, and proved that he took an oath to be true to a ſociety formed for ſeditious purpoſes, without ſuch proof he could not have been convicted—and here the libeller, to degrade the adminiſtration of juſtice, tells the people that the man ſuffered, not for what was charged againſt him, but for taking

ing a ſimple oath—an oath of charity and love.—All that paſſed at that time and ſince too obviouſly proclaim the object of the libeller in that publication.

Another paragraph is this:—"Feaſting in your Caſtle in "the midſt of your Myrmidons and Biſhops, you have "little concerned yourſelf about the expelled and miſerable "cottager, whoſe dwelling at the moment of your mirth "was in flames; his wife, and his daughter then under the "violation of ſome commiſſioned ravager, his ſon agonizing on the bayonet, and his helpleſs infants crying in "vain for mercy. Theſe are lamentations, that ſtain not "the hour of carouſal under intoxicated Counſels; the "Conſtitution has reeled to its center; Juſtice herſelf is "not only blind drunk, but deaf, like *Feſtus*, to the words "of ſoberneſs and truth."

Here again, Gentlemen, attending to the latter part, as the context of the whole, is a direct attack upon the adminiſtration of Juſtice—She is painted as blind drunk; and the people are taught to believe, that no attention is paid to them, or to the adminiſtration of Juſtice by the LORD LIEUTENANT, or thoſe whom he conſults reſpecting it.

The indictment next ſtates this paragraph from the libel:—

"Let, however, the awful execution of Mr. *Orr* be a "leſſon to all unthinking Juries; and let them ceaſe to "flatter themſelves, that the ſobereſt recommendation of "theirs, and of the preſiding Judge can ſtop the courſe of "carnage, which ſanguinary, and I do not fear to ſay, "unconſtitutional laws have ordered to be looſed—Let "them remember, that like *Macbeth*, the ſervants of the "Crown have waded ſo far in blood, that they find it eaſier "to go on, than to go back."

Gentlemen, here again is a direct charge with regard to the trial of *Orr*.—The writer deſires all thinking Juries to be careful how they depend upon the *recommendation of the preſiding Judge*, or the recommendation of Juries. Leaving the people to believe, that in this caſe, the Judge and Jury had recommended this unfortunate man. With regard to the matter of fact, I abſtain from ſaying any thing, and it would ill become me at this time and in this place, to ſtate any thing from my own knowledge. The people are told by this paragraph, that the LORD LIEUTENANT pays no attention to the recommendation of the Judge—in

other

other words, saying to the Juries who shall try criminals, "if you think them objects of mercy, and think them "guilty, acquit them, lest the LORD LIEUTENANT or "the KING should not extend mercy to them, as they "ought."—That is the wicked doctrine held out among many others—The insinuation is, that the LORD LIEUTENANT will pay no attention to the recommendation of the presiding Judge, or of the Jury, because he has a desire to execute the law in blood, and without mercy!

To lay it down, as a universal rule, that the LORD LIEUTENANT should pardon on every recommendation of a Judge is perhaps too extensive; the circumstances of every case must be considered. The ablest Judge might recommend a man to mercy, and it might be afterwards found, that he was not an object deserving of that mercy. Again, with respect to the recommendations of Juries—Juries do recommend to mercy often—sometimes their recommendation is successful—often times not. The extension of mercy is given by the constitution solely to the Crown, or the LORD LIEUTENANT as the representative of the Crown. To him upon the circumstances of the case it belongs to extend or with-hold it. If one might judge from known public facts, we might suppose that much deliberation was had on Mr. *Orr*'s case, for he was respited several times to give time for enquiry and consideration.

With regard to the charge of not attending to the recommendation of the Judge, one might be bold to say, and I shall believe it, till the contrary be shewn, that the Crown never has refused to extend mercy to any man, whom the Judge presiding recommended to mercy.—Can we believe that the Judge in *Orr*'s case recommended him for mercy?

Gentlemen, upon the whole of this case, you will consider, whether this paper could be printed and published with any other view, than that which is imputed to it.—The fact of the publication will be established by evidence, which I shall now state. I have already said, that the law requires the publisher of a newspaper, previous to publication, to set out on oath, the names of the printers, and proprietors; and also requires that a copy of every publication shall be deposited in the *Stamp-Office*, signed with the name of him who has avowed himself the proprietor. We shall produce the affidavit made by the Prisoner on the

17th

17th of *September* laſt:—you would expect we ſhould produce the paper depoſited. The papers down to the day of the publication for which the Priſoner was arreſted, are depoſited; all ſubſequent papers to the day on which the Priſoner was arreſted in *November* laſt but the copy for the 26th of *October*, and that alone, is not to be found in the *Stamp-Office.* How it is gone—by whoſe means, or by what contrivance, or machination is not for me now to conjecture; but happily, that defect will be ſupplied:—We ſhall prove a paper bought upon that day at the place where the Priſoner publiſhed his paper. So that there can be no doubt whatever of the fact of publication—and with regard to the libel, it is impoſſible, that a man of common underſtanding—I know whom I addreſs, that there is not a man among you without an underſtanding capable of deciding any caſe—but I ſay it is impoſſible for any man, regardful of the laws—the conſtitution—the ſacred rights we have to maintain, to heſitate a moment in finding this publication a libel. Thus you will find a verdict, tending I truſt to eſtabliſh the liberty of the preſs, and reſtore with full force the adminiſtration of juſtice in this kingdom. I cannot better inforce ſome obſervations that I have made, than by reading to you the words of a Judge of the moſt diſtinguiſhed talents, and greateſt experience, acting in another kingdom, and in a caſe totally unconnected with party and when paſſion was not excited. In the caſe of the *King* a. *Watſon*, Judge BULLER ſaid:—"Nothing can be of "greater importance to the welfare of the public than to "put a ſtop to the animadverſions, and cenſures which are "ſo frequently made on Courts of Juſtice in this country. "They can be of no ſervice, and may be attended with "moſt miſchievous conſequences. Caſes may happen in "which the Judge and the Jury may be miſtaken: when "they are, the law has afforded a remedy; and the party "injured is intitled to purſue every method which the law "allows to correct the miſtake. But when a perſon has "recourſe either by a writing like the preſent, *by publica-*"*tions in print*, or by any other means, to calumniate the "proceedings of a Court of Juſtice, the obvious tendency "of it is, *to weaken the adminiſtration of Juſtice, and in* "*conſequence* TO SAP THE FOUNDATION OF THE CON-"STITUTION ITSELF." - *(a)*

(a) 2 Durnf. & Eaſt, 203.

GEORGE

GEORGE HATTON, Esq. Sworn.

Q. You are a Commissioner of Stamp duties?
A. Yes.
Q. Is that your name and hand-writing? *(shewing him an affidavit.)*
A. It is.
Q. That affidavit was sworn before you?
A. It was.
Q. By the Prisoner?
A. I cannot exactly say; the room in which I took the affidavit was very dark.

Cross-Examined.

Q. Can you say positively it was sworn by the Prisoner?
A. Not positively.—I asked the man was it his name and hand-writing—he said it was.

Q. *(By the Court.* Was it sworn before you by a man, saying his name was *Peter Finerty?*
A. It was.)

The affidavit was then read, as follows:—

" The affidavit of *Peter Finerty*, sworn the 19th of " *September*, 1797, before *George Hatton*, Esq. one of the " Commissioners for managing the Stamp duties—This " Deponent saith, that he is the only true, and sole printer, " publisher, and proprietor of a newspaper to be published " at No. 4, *Church-lane*, in the city of *Dublin*, entitled " '*The Press*'—and says that no other person save this " Deponent is a proprietor of, or has any share, or profit " in said newspaper. And saith this Deponent's true place " of abode is at No. 23, *Mountrath-street*, in the city of " *Dublin* aforesaid—saith he makes this affidavit in com- " pliance with an act of parliament, entitled An act for " securing the liberty of the Press."

Mr. JOHN KINGSBURY. Sworn.

Q. Have you any paper about you?
A. I have.

Q. Produce

Q. Produce it?

The witneſs produced a newſpaper.

Q. Where did you get it?

A. I believe I bought—

Mr. CURRAN. Stop there, Sir, that is not evidence.

Witneſs. I bought a paper with a letter ſigned "*Marcus*"—which paper I gave to my father.

Q. Where did you buy it?

A. I bought this paper at No. 4, *Church-lane.* I gave it to my father, and he returned it to me.

Q. That is the paper in your hand which your father gave back to you?

A. It is.

Croſs-Examined.

Q. From whom did you buy this paper?

A. I do not know.

Q. Was it from a common news-hawker?

A. I am poſitive it was not.

Q. Why?

A. Becauſe I went to the office, and bought a paper having this letter from a man in the office; I can form no belief as to the man, whether he was a ſervant or a clerk.

Q. For what purpoſe did you buy the paper?

A. I bought it to read it myſelf.

Q. How long after you bought it, did you give your father a paper?

A. I think I gave it to him that evening. I bought it as I was going to court.

Q. How many did you lend it to before you gave it to your father?

A. Poſitively to no one.

Q. Where was it from the time you read it, until you lent it?

A. In my pocket.

Q. Where is your father?

A. He is in court.

Q. (*By the Counſel for the Proſecution.* You went to buy a paper from curioſity?

A. Merely for my own reading:—I have ſeveral times bought papers there ſince for my own reading.

Q. (*By*

Q. (*By the Court.* None before?
A. I will not ſay poſitively, my Lord.)

Q. Who was preſent?
A. I will not ſay there was any perſon, but the man in the office, who folded up the paper, and gave it into my hand.
Q. He was not a ſervant?
A. I cannot ſay:—I will not ſay, whether he was a ſervant, or a clerk.
Q. Did you ever make any enquiry at the Stamp-Office?
A. I did; I went to the office to deſire the attendance of Mr. *L'Eſtrange*, and Mr. *Hatton*; Mr. *L'Eſtrange* told me——

The Traverſer's counſel objected to this.

Q. Did you ſearch for the paper there?
A. No; Mr. *L'Eſtrange* told me he had the paper at home.
Q. Did you aſk him for it again?
A. On *Saturday*, the 9th of *December*, I ſaw him at Mr. *Kemmis*'s——
Q. Does he attend here as a witneſs?
A. I cannot ſay; I ſaw Dr. *Harvey*, who told me Mr. *L'Eſtrange* was out of his ſenſes.

THOMAS KINGSBURY, Eſq. Sworn.

Q. Do you recollect getting a newſpaper from your ſon?
A. I do.
Q. What did you do with it?
A. After reading it, I put it into my deſk, and locked it up.
Q. Do you recollect about what time you got that paper?
A. I cannot recollect particularly; but I believe ſhortly after the publication; whether immediately the day after, I cannot ſay; it was ſhortly after.
Q. You put it into a deſk of your own?
A. I did.
Q. Under a lock and key.
A. I did.

Q. Who

Q. Who took it out of that deſk?

A. I did.

Q. You kept that key yourſelf?

A. I did.

Q. That was a place in which you locked up other things you kept carefully?

A. Yes, I locked up money there.

Q. Who was the perſon you gave that paper to after taking it out of the deſk?

A. To my ſon, the laſt witneſs.

Q. It was a paper importing to be a paper, called *The Preſs?*

A. It was.

Q. Do you recollect a letter in it ſigned *Marcus?*

A. I do; that was the reaſon I kept it.

Q. Did you give it to your ſon, as the ſame perſon, who had delivered it to you?

A. I did.

Mr. JOHN KINGSBURY examined again.

Q. Is the paper you produced the identical paper returned to you by your father?

A. It is the very paper:—I got it from my father on the 9th of *December*, and have had it in my poſſeſſion ever ſince.

THOMAS KINGSBURY, Eſq. Croſs-examined.

Q. You locked up the paper in your deſk?

A. I did.

Q. In conſequence of a remarkable letter?

A. Yes.

Q. Did you give the paper to any other perſon to read that remarkable letter?

A. I do not recollect I did.

Q. There are ſome perſons in your houſe, that you might have given it to read?

A. No: The perſons in my houſe are moſtly daughters.

Q. Can you ſay poſitively you did not lend it?

A. I take upon me to ſay, it was not out of my ſight —If I gave it to any perſon, it was in the room where my family were ſitting, and it was not out of my ſight till I locked it up.

Mr.

Mr. M'NALLY. My Lord, I object to this paper being read. There is an act of parliament in this kingdom for protecting the liberty of the Preſs, and by that act every printer is obliged to depoſit with the officer of Stamps, a copy of each publication.——

Mr. *Juſtice* DOWNES. You do not mean to ſay, Mr. M'NALLY, that no other ſpecies of evidence of publication is admiſſible, but that mentioned in the act?

Mr. M'NALLY. No, my Lord; but the ſtatute creates a ſuperior ſpecies of evidence. The ſtatute ſhews the intention of the legiſlature; it is for ſecuring the liberty of the preſs, and that the preſs may not be proſecuted upon vague and improper grounds——

Mr. *Juſtice* DOWNES. Do you mean to contend, that there is no evidence to go to a Jury?

Mr. M'NALLY. My Lord, I mean to ſay, that the beſt evidence which the nature of the caſe admits, and which the law requires, is not given.

The COURT directed the paper to be read.

Mr. M'NALLY deſired to have the record to compare it with the paper, while the officer was reading it.

Mr. *Juſtice* DOWNES. The officer may have the record in his hand and compare it, while another perſon reads the paper:—But the officer cannot part with the cuſtody of the record, you or your agent may look over the record while the officer reads it.

Mr. M'NALLY. It is the conſtant practice in *England*, upon trials for libels, to let the defendants Counſel inſpect the record. I never knew it refuſed.

It was at length agreed, that the traverſer's agent might ſit beſide the officer, and ſee the record compared.

The letter ſigned "*Marcus*" was then read from the paper, by the Clerk of the Crown, while his Deputy held the record and compared it.

WALTER

WALTER BOURNE, Esq. Examined.

Q. What office do you hold?

A. Deputy Clerk of the Crown for the County *Antrim.*

Q. Have you the custody of the criminal records of that county?

A. I have.

Q. What is that in your hand?

A. The record of the conviction of *William Orr.*

Q. Is it the original record?

A. It is.

A part of this record was read, for form's sake, the traverser's counsel, not desiring to have the whole read.

Here the Case was rested for the Crown.

Mr. FLETCHER. My Lord, I am counsel for the Traverser, and I would just state a preliminary objection that strikes my understanding, not with a view of preventing the counsel for the Crown from supplying the defect, if they can.—The evidence to prove the fact of publication consists of this. A witness was produced on the part of the Crown, who swore, that an individual, calling himself by the name of the Traverser, did swear an affidavit which was lodged in the office. I did not understand from the evidence, that he proved either one or other of these two things; namely, that he was convinced in his conscience, that the traverser is the individual, *Peter Finerty*, who swore the affidavit, or what, I admit, might be evidence to go in substitution, that the signature to the affidavit purported to be the hand-writing of the Traverser, or that he believed it to be the hand-writing of the Traverser. Under these circumstances, my Lord, I contend, that the legislature having pointed out a particular kind of evidence, in a case of all others liable to error, bringing home the fact to the party accused; that kind of evidence has not been produced here; but to lay a ground for the substitution of inferior evidence, it strikes my humble understanding, that they ought to have gone a step further; because otherwise it would be manifest, that in times like the present, it is not impossible, that any individual in the community, calling himself, *Peter Finerty* might offer himself at the Stamp-Office—offer an affidavit and sign his name,

name, when he was not *Peter Finerty* at all.—If the Commiſſioner had gone further and ſaid he believed the hand-writing to be that of the Traverſer's, I ſhould be inclined to believe, it would be evidence for the Jury. But the evidence offered is the loweſt that imagination can conceive; for it amounts to no more than that a man calling himſelf, *Peter Finerty*, offered himſelf at the Stamp-Office, and ſigned a name purporting to be the name of *Peter Finerty*—But where is the evidence bringing it to the Traverſer?—Which appropriates it to him?—And ſurely, my Lord, in a caſe of this kind which has been ſtated as a caſe the moſt flagitious, *a multo fortiori*, is it neceſſary, that the proof ſhould be brought home, and if the Traverſer be convicted, it ſhould be upon ſatisfactory evidence—I merely ſtate this, my Lord, and ſhall ſit down to wait the opinion of the Court.

Mr. CURRAN. I truſt, my Lord, you do not think it neceſſary for me to add any thing to what has been ſaid by Mr. FLETCHER. I take it, my Lord, that in all caſes there muſt be ſome evidence of the identity of the Priſoner.—An affidavit has been read, purporting to be made by ſome perſon calling himſelf, *Peter Finerty*.—What evidence is there, that it was made by the Traverſer?—The evidence offered is to ſhew, that he is proprietor of the Printing-Office, No. 4, *Church-lane*. His declaration of that would be evidence againſt him, becauſe it would be an admiſſion againſt himſelf. Now ſuppoſe there were no affidavit—but a witneſs ſaid, a man came to me, ſaid his name was *Peter Finerty*, that he lived at No. 4, *Church-lane*, and that he was the Printer of *the Preſs?* All that might be true: a perſon might have told that to the witneſs—But what that perſon ſaid, may not be true—There muſt be ſome evidence to ſatisfy the Jury that the Traverſer was the perſon, who made that declaration. It is evident, that any man in human ſociety might have gone to the office—he is aſked, who he is—"I am *Peter Finerty*"—is that evidence, unleſs it appears it was the Traverſer?—Suppoſe the common caſe of a promiſſory note—a man is ſued upon it. The witneſs is aſked, do you know the defendant?—no—his hand writing?—no—but ſomebody ſaid it was ſigned by *Finerty*, and he is the defendant.—Is it not as neceſſary to prove the identity in a criminal, as in a civil caſe? Would you in a civil bill give a decree upon evidence,

evidence, that ſomebody ſaid the defendant ſigned the note, without ſhewing, that it was the defendant? I do not find any evidence of that kind here, and I thought it idle to enter into a fencing upon a ſubject of this kind, or to interpoſe with the order which the counſel for the Crown might be deſirous of purſuing. But I truſt your Lordſhip will think it one of the firſt principles of law, that no man can be affected, either civilly as upon a contract, or criminally as upon a delinquency, unleſs there be ſome evidence, that he is the perſon againſt whom the contract is alleged, or the criminality advanced. The evidence here is, nakedly, that ſomebody or other, whom the witneſs does not know, did ſwear that affidavit.—I do not know that the law of this country does appropriate a name to the ſingle uſe of any individual. I have not heard of any monopoly of that kind. Suppoſe all the Commiſſioner ſaid to have been true; ſuppoſe the man who went really bore the name of *Peter Finerty*, may there not be two, or ten perſons of the ſame name. Is a man then to be criminally reſponſible upon a verdict by a Jury, by which they eſtabliſh, that ſome man of the name did a particular act, no matter who he is?—Becauſe if your Lordſhip lets this go to the Jury, as ſufficient evidence, they will think, if all the other parts be eſtabliſhed, that there is no doubt of the identity, and they will give a verdict charging ſome man of the name of *Peter Finerty*—But is there any evidence whatever, that the *Peter Finerty* was the man now upon trial at the bar?———

Mr. *Juſtice* DOWNES. Do you propoſe to do any thing more, Mr. Attorney General?

Mr. ATTORNEY GENERAL. My Lord, it ſtrikes me there is evidence to go to the Jury:—However we will give further evidence.

GEORGE HATTON, Eſq. again Examined.

Q. Do you know the Priſoner?

A. I *believe* him to be the man who ſwore the affidavit.

Mr. CURRAN. Sir, you cannot give that evidence.

Q. How was he dreſſed?

A. He had a great coat, and appeared as if he came from printing.

Mr.

Mr. CURRAN. I am ſorry to ſee an attempt of this kind to ſupply evidence which is defective.

Major SIRR. Sworn.

Q. Do you know *Peter Finerty?*
A. I do.
Q. Point him out?
A. There he is—*(pointing to the Traverſer.)*
Q. Do you recollect having arreſted that Priſoner?
A. I do.
Q. Upon what day?
A. I do not recollect the exact day.
Q. In what month?
A. It was during the ſitting of the laſt commiſſion.
Q. Where did you arreſt the Priſoner?
A. At an office, called the Preſs-office, in *Church-lane.*
Q. What number?
A. Number 4, *Church-lane.*
Q. Had you any converſation with the Priſoner at that time?
A. I had.
Q. State what it was.
A. I aſked him if his name was *Peter Finerty.*

Mr. CURRAN. I truſt the Counſel will have the candour to mention what is the evidence which they intend to give; that if there be any objection to it, we may make it.

Mr. TOWNSEND. I am going to give evidence of declarations made by the Priſoner, and to render them admiſſible, I will aſk a preliminary queſtion.

Q. Was the Priſoner induced by hopes or fears to make any declaration to you?

The Counſel for the Traverſer objected to this queſtion.

Mr. TOWNSEND. If there be no objection to the witneſs hearing me, I will ſtate the evidence we mean to give. I am inſtructed, that Major *Sirr* took the Priſoner in *Church-lane*, and that he did there confeſs he was the printer of the paper.

Mr. M'NALLY. I beg leave to ſtate an authority—In 5 *Mod.* 165. Lord *Holt* held, upon trial of an information for a libel, that if a confeſſion ſhall be taken as evidence to convict the party, it is but juſtice and reaſon, and ſo allowed in the civil law, that his whole confeſſion ſhall be evidence, as well for as againſt him, and then there will be no proof of a malicious and ſeditious publication.

Mr. *Juſtice* DOWNES. To be ſure, the whole declaration muſt go to the Jury.

Q. Mention what the converſation was, which you had with the Priſoner?

A. I aſked him whether his name was *Peter Finerty*, and whether he was the publiſher of *The Preſs?*—He told me, that he was.

Q. Is that the man at the bar?

A. He is.

Q. Did you aſk him one or two queſtions?

A. I aſked him firſt, was his name *Peter Finerty?*

Q. Did he anſwer?

A. He did; he ſaid his name was *Peter Finerty.*

Q. Then you aſked him a further queſtion?

A. I did; I aſked him was he the Publiſher of *The Preſs*—he ſaid he was.

Croſs-Examined.

Q. Who was preſent at that converſation?

A. Three or four people, I think.

Q. Can you name them?

A. I cannot—I would know one of them, if I ſaw him.

Q. Did you aſk him, if he was the perſon who ſigned the affidavit?

A. I knew nothing of the affidavit?

Q. Did you aſk him, was he the author of the paper ſigned *Marcus?*

A. I did not.

Q. You do not know any of the perſons who were there?

A. No.

Q. Had you a warrant?

A. I had.

Q. Did you go ſingly?

A. No, I had a man with me.

Q. What

Q. What is his name?
A. *Mitchell.*
Q. Where does he live?
A. In *Ship-ſtreet.*
Q. What buſineſs is he?
A. I do not know.
Q. You know him, without knowing what he is?
A. He is an evidence for the Crown.
Q. Was this before or after the publication ſigned *Marcus?*
A. I do not know;—I received a warrant, and executed it.
Q. Can you fix the time, whether it was before or after?
A. I cannot be poſitive.
Q. What did you do with *Finerty?*
A. I brought him to the Caſtle-yard, and had him eſcorted to *Newgate.*
Q. You are a zealous advocate for the freedom of the preſs—Have you taken any ſteps to reſtrain its licentiouſneſs?—Are you the perſon who chaſed a carrier of *The Preſs* with a drawn ſword?

Mr. *Juſtice* DOWNES. The witneſs is not bound to anſwer that queſtion, if he do not chooſe it.

Witneſs. I never did.

Q. The Court tells you, that you may anſwer the queſtion, if you chooſe?
A. I ſay, I did not.
Q. Did you ſee any perſon ſtop a carrier of *The Preſs?*
A. No.
Q. Were you preſent when *Finerty* was taken out of *Newgate* and brought to Alderman *Alexander's* in the night time?
A. No.
Q. Do you know, whether *The Preſs* is a paper in the pay of Government, or the Treaſury?
A. I ſhould imagine not.
Q. Are there not other papers in the pay of Government?

Mr. *Juſtice* DOWNES. I do not ſee that this examination is material to the preſent caſe.

Mr.

Mr. SAMPSON. My Lord, it is my duty to ſubmit to the Court:—But if I think the queſtion may be material, I hope I will be heard. I do not wiſh to ſhut out any light which may aſſiſt the diſcretion of the Jury upon the deciſion of the moſt important queſtion.

Mr. CURRAN. My Lord, We conceive the evidence to be admiſſible in this way. This is a proſecution avowedly carried on by the ſtate, and the Jury being entire judges altogether upon the entire fact, it may not be immaterial for them to know, whether the Government which proſecutes this paper does not itſelf employ papers on its owu behalf.

Mr. SAMPSON. I thank Mr. CURRAN. My Lord, I conceive, there is no right to praiſe falſely, or to cenſure without juſtice.

Mr. TOWNSEND. If this were a Court Martial, which could enforce retribution, or acknowledgment of improper conduct, there might be ſome foundation for the queſtion which has been put.

Mr. *Juſtice* DOWNES. What is your queſtion, Mr. SAMPSON?

Mr. SAMPSON. My Lord, my queſtions are ſo many, that I cannot tell them, but in the order in which I ſhall put them to the witneſs.

Mr. *Juſtice* DOWNES. Put your queſtion.

Mr. SAMPSON. I aſk the witneſs, whether there are not papers in the pay of Government?

Mr. TOWNSEND. I object to that queſtion.

Mr. CURRAN. The conduct of the Government is the ſubject of the examination in this paper.

Mr. *Juſtice* DOWNES. This Court does not ſit to enquire into the conduct of Government.

Mr. CURRAN. The ſtatement of the Counſel has gone into a hiſtory of the Government for years back, and I do not ſay it was improper. But I beg leave to ſhelter the queſtion now put under the authority of that proceeding.

Mr.

Mr. ATTORNEY GENERAL. My Lord, I do object to this queſtion. I do avow, that on the part of the Government I proſecute this man at the bar, for an atrocious libel; and by way of defending this man, who has pleaded, *Not Guilty*, they ſay, that the Miniſters have done ſomething wrong. The avowal of the Counſel is this, that they will examine to ſhew, that Government pays a paper, and publiſhes libels againſt other people, and upon that ground, they hope in a country, where a little yet remains, to influence the Jury. They want to ſhew that crimes are committed by Government.—Undoubtedly, ſome of the members of the Government may commit crimes, and may publiſh libels—Let them be puniſhed for it, if the fact be ſo—But is the guilt of the man at the bar to be done away by the crimes of others? My Lord, I object to the queſtion, on account of the law, on account of practice, and becauſe it would be enquiring into the conduct of others, not upon their trial.

Mr. SAMPSON. My Lord, I have not yet had an opportunity of laying my ſentiments before the Court. My reſpect for the ATTORNEY GENERAL prevented me from interrupting him. It is a rule of law, my Lord, obſerved by all counſel, and God forbid, there ſhould be one rule for the Counſel for the Priſoner and another rule for the Counſel for the Proſecution,—I ſay, it is a rule to ſtate, what they intend to prove. It was ſtated by the ATTORNEY GENERAL, that this paper was part of a ſyſtem, and he has introduced invocations to God, and called upon the paſſions of the Jury. My Lord, we do not live in a country—and I ought to reſpect the Law and the Judges, when I ſay ſo—where non-reſiſtance is the doctrine of the law—in a country where it is treaſon———

Mr. JUSTICE DOWNES. Speak to the point.

Mr. SAMPSON. My Lord, the point is this, that the ATTORNEY GENERAL has made it part of his caſe, that "*The Preſs*," was a part of a vile ſyſtem. I want to ſhew, it is no ſuch thing, and by ſhewing, that there are papers, free to ſay what they chooſe on one ſide, it is vain to ſay, the preſs is free, if it be put down on the other. It is nothing but a fair ſyſtem, to oppoſe argument by argument—aſſertion by aſſertion, and invective by invective,

with

with this only difficulty, that it has no men in arms to aſſiſt it, and can only be defended by paper ſhot.

Mr. *Juſtice* DOWNES. This is not arguing a point of law.

Mr. SAMPSON. I wiſh to aſk the witneſs, whether he believes there is any paper in the pay of the Treaſury?

Mr. *Juſtice* DOWNES. That is a queſtion not at all relevant to the caſe before the Jury, and ſhould not be aſked.

Q. Did you ever hear of the *Northern Star* being put down by the ſoldiery?

A. I have heard it.

This examination was objected to.

Mr. FLETCHER. My Lord, with great reſpect, we, who are to defend the Traverſer, ſuppoſe that malice and ſedition are charged to be the objects of the libel. The Jury are judges of the object and the motives of the publication—We are apprized, that it is ſtated to be a falſe and malicious libel againſt the Government, and that it is part of a ſyſtem formed to bring the adminiſtration into contempt, and to diſſolve the government—We ſuppoſe, my Lord, that the guilty conduct of that paper, ſuch as it is, and the intentions of it, are before the Jury, now competent to determine, what is legal evidence againſt him and what is not—The time is gone by, my Lord, when any perſon ſitting where your Lordſhip does, was to pronounce whether the matter was libellous, or not. Now, my Lord, to ſhew this paper to be a libel, it muſt be ſhewn, that it is malicious and falſe, and then ſedition follows, in common ſenſe and in contemplation of law. Now, the queſtion is, whether this man, being indicted as the printer and publiſher of a paper, may be calumniated by perſons, not warranted by the higheſt executive authority, but by ſubordinate officers?—Suppoſe that to be the fact—is not the evidence, now offered, appoſite to the *quo animo?*—Is it, or is it not?—In any caſe whatſoever—ſuppoſe it was a caſe of murder; would not every thing elucidating the intention of the man, ſuppoſed to be guilty of homicide, be evidence?—Would not every act of the party ſlain tending to provoke, be evidence?—Does not malice always ariſe,

whenever

whenever it appears, from a maſs of evidence of that kind? If two perſons meet—one is roughly treated—groſsly injured—words ariſe—one ſtrikes—another returns—is not all that evidence to go to the Jury?—So in a caſe of a libel.—There is a diſtinction between private ſlander, and public cenſure. This is no indictment for attacking a private boſom friend and dragging into public view his conduct in private life—his family connections, with which the public have nothing to do—Therefore this is not a proſecution for private ſlander, but the kind of libel, now the ſubject of enquiry, is ſtated to be, for calumniating the State.—Is not the liberty of the preſs—the wholeſome liberty of the preſs, in every Government to be ſupported? And is not therefore the *quo animo* of the party of the very pith and marrow of the proſecution?—How can the Jury ſay, whether this libel be falſe and malicious, and draw from that the inference of ſeditious, except they follow the ATTORNEY GENERAL, and believe, that the man, who wrote this libel, did it with malice *prepenſed*, knowing the matter to be *falſe?*—But if on the contrary, it comes out, that there are other papers, uſing provoking language and preſſions of this kind, does it not go to the *quo animo* with which the fact of publication was done?

Mr. *Juſtice* DOWNES. It all comes to this, that various libels are publiſhed in other papers.

Mr. FLETCHER. No, my Lord. The queſtion is, whether *papers* are publiſhed?—We do not ſay *libels*.

Mr. *Juſtice* DOWNES. I conceive that to be utterly immaterial to this caſe.

Mr. FLETCHER. Suppoſe, my Lord, this was an information, at the ſuit of an individual, grounded upon a letter containing much ſlanderous matter. Would it not be evidence to ſhew another letter written to the accuſed antecedent to the letter ſent by him?—We, who are concerned for the Traverſer, in our humble judgments conceive, that every thing tending to ſhew the intention, even though that intention ſhould be erroneous, is evidence. A man may in error, but *bonâ fide*, publiſh matter againſt Government; but the Jury are to determine the *quo animo* with which it was publiſhed. I call your Lordſhip's attention to the letter written by *Junius* to his Majeſty:—The Jury, before the act of parliament upon the ſubject of libels,

libels, brought in a verdict againſt the printer, *Guilty of publiſhing only:* there was a conteſt with reſpect to the verdict, and that caſe actually produced the act of parliament. —The Jury would not find any guilty intention. In this caſe, how can your Lordſhip ſay, what effect it may have upon the Jury, as to the queſtion of intention? Or ſuppoſe this to be the fact——the gentlemen concerned for the Crown may waive any thing in their own favour—ſuppoſe the Jury were, from the reſiſtance of thoſe gentlemen, to be of opinion, that Government did employ papers to do to the *Country*, what it is ſaid, this paper has done to the *State*, can your Lordſhip tell, whether that may not be matter for the exerciſe of the judgment of the Jury upon the *quo animo?* Will it not ſhew the kind of view with which proſecutions of this kind are brought forward?—The provocation, if any, ariſing, not from this paper, but from others—Will not that go to the point, which under the act of parliament the Jury are to try?—We think, that every thing which can be brought in the judgment of the Jury to bear upon the mind of the party accuſed in doing the fact charged againſt him is applicable to the preſent caſe.

Mr. *Juſtice* DOWNES. Do you examine any further?

Mr. SAMPSON. Your Lordſhip decides againſt the queſtion.

Mr. *Juſtice* DOWNES. I have.

Mr. SAMPSON. My Lord, I ſubmit:—I will aſk another queſtion.

Q. Did you at any time ſeize a parcel of theſe papers entitled *The Preſs.*

A. I will not anſwer that queſtion, unleſs I am told, that I muſt.

Mr. PRIME SERJEANT. The anſwer to that queſtion may criminate himſelf.

Mr. *Juſtice* DOWNES. The witneſs muſt be the judge, whether it tends to criminate himſelf.

Mr. SAMPSON. Major *Sirr*, you are to judge, whether the anſwer will tend to criminate yourſelf—and the queſtion is, Did you ever ſeize any papers entitled *The Preſs?*

A. I will not anſwer.

Q. Do

Q. Do you hold any office under Government?
A No.
Q. What office do you hold?
A. Deputy Town Major.
Q. Are you a Magiſtrate?
A. No further than that.

Mr. CURRAN. I truſt your Lordſhip will be of opinion, that the counſel for the Crown have failed to ſupply the evidence, and that it is not neceſſary for the Traverſer to go into any caſe; and the counſel for the Crown having been admitted by the indulgence of the Court, waiting a length of time, to go into a ſupplemental caſe, they will not be allowed a repetition of that kind. My Lord, I ſubmit, that this paper has not been proved in ſuch a manner as to make it evidence to go to a Jury. The evidence which the counſel have offered of it, conſiſts ſhortly of this. I ſhall ſtate merely that which is material—Mr. *Hatton* ſwore that he took the affidavit produced—that ſomebody ſigned it, that it was in a dark room, and he did not undertake to identify the perſon of any man ſwearing it. Therefore his evidence ſimply reſts there, namely, that there was an affidavit ſworn before him by ſomebody, calling himſelf *Peter Finerty*, and the queſtion is, whether the want of proof of the identity of the perſon has been ſupplied or not?—That was the defect in the evidence—I ſay firſt they have not ſupplied it; becauſe they cannot by law be admitted to go into the kind of evidence which they have given to ſupply the defect. It was ſtated by the counſel for the Crown, that an affidavit was ſworn by *Finerty* and ſubſcribed by *Finerty*, and *an* affidavit was produced as ſuch:—therefore there did appear that ſpecies of evidence from whence they ought not to be allowed to travel. It is an higher ſpecies of written evidence, put upon the records of the country, authenticated by the oath of the man ſwearing it, and the office of the man taking it. In the moſt common caſe, if a deed be produced, it muſt be proved by the ſubſcribing witneſs to it; and the acknowledgment of the party, that it was his, cannot be admitted:—there muſt be evidence of a ſearch for the witneſs, and his hand-writing muſt be proved, if he be not produced himſelf.

Mr. *Juſtice* DOWNES. If a deed be the deed of the party againſt whom it is produced, and is admitted by himſelf, it is evidence, and may be read againſt him.

Mr. CURRAN. My Lord, I will not controvert that —I go upon that very principle. If there be evidence, that the Traverſer admitted the ſignature to the affidavit to be his, it will be evidence againſt him. But where there is avowedly written evidence, that muſt be the foundation of the fact to be eſtabliſhed by it, and it cannot be eſtabliſhed by other evidence. It being admitted that there is ſuch written evidence, no other evidence of an inferior nature can be received—I need not go into a variety of diſtinctions, into which caſes adjudged may vary themſelves. The evidence of the fact here to be eſtabliſhed is contained in a written paper;—*it* muſt be proved ſome way by inferior evidence, if the direct cannot be had:—but no evidence, ſave ſomething to prove *that paper* can be received. Suppoſe an action brought upon a bond—the bond is in court—can any evidence be received but evidence of that bond—the hand-writing of the witneſs, or the admiſſion of the party?—Could your Lordſhip receive his admiſſion, that he owed a debt to that amount?—You could not, becauſe there muſt be an acknowledgment of the bond itſelf—becauſe other kind of evidence is not an inferior kind of evidence for the ſupport of the muniment in queſtion—but other evidence is evidence, giving up altogether the evidence of the muniment, and ſubſtituting a totally diſtinct proof in its place. So, my Lord, there may be many ways of proving the contents of a paper; but no mere declaration of the party, not eſtabliſhing that paper—or admitting the ſignature to that paper—or giving authority to it, can be received in a Court of juſtice. And it is upon the wiſeſt principle—to prevent the groſs and abominable influx of perjury, which may ariſe from evidence of that kind. The man producing a recorded inſtrument muſt prove the inſtrument itſelf—no other evidence can be received.——

Mr. *Juſtice* DOWNES. Do you mean to ſay, that no other poſſible proof of the publication of a paper can be given, but that affidavit which the legiſlature allows to be evidence?——

Mr. CURRAN. My Lord, I do not contend for that; becauſe it may he proved by many other ways. But where there is a particular authoritative piece of evidence, and that is brought into Court, and ſought to be made the foundation of a fact neceſſary to be eſtabliſhed againſt the Traverſer, any collateral or ſecondary evidence of that fact is not admiſſible, when the primary evidence may be had.—That is the argument which I ſubmit to your Lordſhip's judgment.—Now ſuppoſe I am erroneous, ſee what the evidence is. Firſt, they wanted to prove that the paper charged in the libel was publiſhed by the Traverſer, and what is the evidence given?—The witneſs ſaid, I went in and arreſted the man, and he ſaid he was the publiſher of *The Preſs*—I do not reſt upon that proceeding—taking a man by the throat, and repeating what he may have ſaid under the ſurprize and terror of impriſonment?—But I aſk this queſtion—Has he ſaid, he was the publiſher of the paper in queſtion? That paper containing the libellous publication, as it is called, and which has been read in Court? or that he was at the time of that publication, the proprietor of that paper?—Suppoſe the queſtion was, the execution of a deed—" have you executed it"—" Yes"—" When"—*non conſtat?*—So here, he admits himſelf the publiſher of the paper at the time he was ſeized; but did the ſage queſtioner aſk, whether he was the publiſher at the time this paper was publiſhed—or that he was publiſher a week before the arreſt?—No—and now the argument is—he admitted he was the publiſher on *Saturday*, therefore he muſt have been the publiſher on *Monday* before—ſeven days of grace more—a week is half as good as a fortnight.—To what time is the admiſſion to extend? He might have been the publiſher at the time of the arreſt—but why not allow another week, becauſe no time runs againſt the Crown? Why not allow a month?—A year?—If the declaration of a man charging him with reſponſibility is to be carried further back than the full extent of his own confeſſion, where is the good for which the Court ſits and a jury is called, if conjectures be a good ground upon which any man can be found guilty of a criminal charge?—I aſk is this evidence, ſuppoſe it every word true?—Suppoſe the man did ſtate when Major *Sirr* went in—" I *am* the publiſher of *The Preſs*"—But here is a paper only ſix or ſeven days before, and then it is ſaid what likelihood is there that he

was

was the publiſher of that very paper?—That is conjecture—it is not proof—There is no forgery in the ſimilitude of types:—But it would be curious to convict a man, becauſe of ſuch a ſimilitude between one Newſpaper and another.—Your Lordſhip may recollect an objection taken, not upon ſo ſtrong a ground as this, in the caſe of the *King* v. *Rhabb*, with regard to a paper, that is now dead—The *Northern Star*. If I remember right the objection was then allowed.——

Mr. *Juſtice* DOWNES. But all the reſt of the Judges thought the allowance of that objection was wrong.

Mr. CURRAN. I know, my Lord, they did. The caſe was this.—The affidavit of the defendant did ſtate, that he was the proprietor of the paper at the time of the affidavit made:—it was objected, that it did not ſhew him to be the proprietor at the time of the publication. The Court allowed that objection, and afterwards the Judges thought the allowance of it was unconſidered, becauſe the ſtatute ſays, a new affidavit ſhall be made of the change of property, and therefore that affidavit was evidence to to the Jury—But there is a diſtinction between that caſe and this—The Judges were wrong there in not receiving that previous admiſſion of the publication—but there is a wide difference between acting upon an admiſſion progreſſively, and retroſpectively. There the opinion was erroneous, becauſe it was ſtrong ground to ſuppoſe, that he, who by a public act ſaid he was publiſher, continued to be ſo, as he did no public act to ſhew the contrary. But here it is merely the looſe aſſertion of a witneſs, ſtating, that upon a time *ſubſequent* to the alleged publication, the Traverſer did admit, he was *then* the publiſher. Upon this ground, my Lord, I ſubmit, that what is offered is not evidence to ſhew that *this* paper was publiſhed by the Traverſer at the bar.

Mr. ATTORNEY GENERAL. My Lord, I do not know whether your Lordſhip thinks it neceſſary for me to ſay any thing in anſwer. The learned counſel argues a queſtion, which does not ariſe; for this caſe muſt go to the Jury, and I in full confidence reſt, that there is evidence to go to the Jury, and ſuch as, if there be no other to affect it, will be ſufficient to convict the Priſoner. The queſtion now is not, whether the affidavit was made by the

the Priſoner—but whether the Priſoner be the publiſher of the libel, or not?—and the immediate queſtion now is, whether there be *any* evidence given that he is the publiſher?—I rely upon it, that there is evidence of the publication, excluſive of the affidavit altogether. The act of Parliament upon this ſubject did not intend to alter the nature of evidence, or the power of a Proſecutor to convict; but it endeavoured to have a permanent ſpecies of evidence always within reach to be produced againſt a publiſher. Here a part of the evidence which the legiſlature intended to procure is wanting, and we now come without that evidence to ſhew that the Priſoner did publiſh this paper. It is not your Lordſhip's province to ſay the Priſoner did publiſh the libel; but to ſay, whether there is evidence to go to the Jury. See what the evidence is excluſive of the affidavit—that a paper was publiſhed at No. 4, *Church-lane*,—that the letter in queſtion was in that paper, and when the magiſtrate went to arreſt the Priſoner he was aſked, was he the publiſher?—he ſaid, he was, and therefore he was arreſted. I do moſt chearfully meet the gentlemen, and put the caſe to the Jury, whether there is evidence for them to conſider, and deliberate upon, though the gentlemen ſay, there is no evidence againſt the man acknowledging himſelf to be the publiſher of the paper, and living in that very houſe where the paper was bought.

Mr. CURRAN. The affidavit ſtates that the Traverſer lives in *Mountrath-ſtreet.*

Mr. ATTORNEY GENERAL. Then Mr. CURRAN has recourſe to the affidavit which ſtates the paper to be printed at No. 4, *Church-lane*, where the Priſoner was arreſted.

Mr. *Juſtice* DOWNES. There is evidence for the Jury, excluſive of the affidavit—The paper was bought at No. 4, *Church-lane*, by one witneſs, and another witneſs found the Priſoner there; he acknowledged his name, and that he publiſhed that paper. In my apprehenſion that is evidence for the Jury.

Here the caſe was reſted.

The Jury intimated a deſire to aſk the Commiſſioner of Stamps a queſtion, it was granted.

Q. Was there ever any perſon regiſtered as the Proprietor and Publiſher of *The Preſs*, but one?

A. No.

Mr. SAMPSON. Had you any kind of knowledge by which to aſſert that?—Do you know any thing of the regiſtry?

A. No.

Q. (*By the Jury.* Could there be any other regiſtered without your knowledge?

A. No.)

Mr. SAMPSON. There are other Commiſſioners of Stamps?

A. There are.

Q. They might take affidavits without your knowledge?

A. I think not.

Mr. ATTORNEY GENERAL. It is for the Priſoner to ſhew, that another affidavit was made, if there were any ſuch.

Mr. SAMPSON. Then Mr. ATTORNEY GENERAL gives up the affidavit which has been produced.

Mr ATTORNEY GENERAL. I give up nothing—But I ſay, that if the Priſoner reſts his defence upon a ſecond affidavit it is for him to ſhew it.

Mr. CURRAN. I do not think, that the law throws ſuch proof upon the Traverſer.

Mr. J. SHEARES. If they go upon the affidavit they muſt prove it; or it muſt be given up. The evidence now given is incompatible. If they go upon the affidavit —they give up the other evidence—or if they rely upon the affidavit they muſt give up the reſt; ſo that the ATTORNEY GENERAL muſt abandon the aſſertion that he gives up nothing.

Mr. ATTORNEY GENERAL. We give up nothing;—We reſt our caſe here upon the part of the Crown.

Mr. FLETCHER. *My Lord, and Gentlemen of the Jury.* In this caſe I am counſel for the Traverſer—And I would not detain you half a minute upon ſo humble a ſubject as myſelf

myſelf—But in truth, till within a few hours I did not know I ſhould have had this duty to diſcharge. On returning home late laſt night, I found a brief in this caſe lying on my table, and when I ſaw on the back of it the two reſpectable names of Mr. CURRAN and Mr. PONSONBY, who have precedence of me, I thought I ſhould have nothing more to do, than aſſiſt in the examination of the witneſſes; but by ſome means, no licenſe had been obtained for Mr. PONSONBY. I merely offer this, that if I ſhould not be ſo well arranged as might be expected, I may not be charged with inattention. Having ſtated thus much, I ſhall treſpaſs upon your patience but a ſhort time.

The Traverſer ſtands indicted for printing and publiſhing a falſe, malicious and ſeditious libel againſt the goverment of this country. To eſtabliſh that charge againſt the Traverſer, you, gentlemen, muſt be convinced of two things:—You muſt in your conſciences believe, and muſt as honeſt men, called upon to diſcharge the moſt ſolemn of all duties, in the preſence of your country and your God, be ſatisfied of two facts, in either of which if you have any doubt, you are bound by every thing, which you hold dear and ſacred, to acquit the Traverſer. Firſt, you muſt be convinced, that the Traverſer did print and publiſh the paper in queſtion—And after having ſatisfied your minds of that preliminary queſtion, then you are, ſecondly, to conſider, whether the paper-writing ſpread upon the record, be a falſe, malicious and ſeditious libel, or not?—

With reſpect to the preliminary queſtion, you have already heard much ſaid and argued upon to induce the Court to be of opinion, that there was not ſufficient evidence for you to deliberate upon—But the diſpoſal of that queſtion, precludes not your province. You are now called upon to decide another queſtion, upon which the Court was not called upon to decide—All the learned Judge decided was, that there was evidence for you to exerciſe your judgment and diſcretion upon from the circumſtances ſworn to—But upon thoſe circumſtances you are now to judge and be convinced beyond the ſhadow of doubt, that the Traverſer was the publiſher of that paper, which is ſtated to be a falſe, malicious and ſeditious libel.

Now,

Now, gentlemen, be pleaſed to advert to the evidence of that fact; and if there be not a cogency ariſing from it—if it do not flaſh conviction upon your minds, the learned Judge will be the firſt to tell you, that it is the boaſt of the criminal code, that where doubt and heſitation prevail in the minds of reaſonabe men, the Jury are called upon to acquit.—You are now called upon to diſcharge your duty in the eyes of your fellow citizens, who can exerciſe their reaſon as well as you upon the evidence of the facts—who will exerciſe their reaſon and draw that inference which the caſe will furniſh. Every man is gifted by the Almighty with faculties to draw the deductions of reaſon—The public will exerciſe their diſcretion, and upon their determination will your verdict ſtand or fall. See how imperiouſly you are called upon to exerciſe with coolneſs, and diveſted of paſſion as far as it is poſſible for the human mind to be diveſted, that diſcretion with which you have been entruſted by the law, and ſee whether you have any room to doubt, that the Traverſer was the publiſher of the paper.

See what the evidence is as to that fact:—you have evidence of an affidavit made by a man ſtating himſelf to be *Peter Finerty*—an affidavit taken in a dark room; but as to the identity of the perſon, or ſimilitude of hand-writing, you have not a tittle of evidence. As the caſe ſtood upon that, to a demonſtration, no honeſt man, no man of reaſon could draw the concluſion, that *Finerty* was the identical perſon, who ſwore the affidavit, purporting to be the affidavit of the Traverſer—there is not an *iota* of evidence, which could weigh with any reaſonable mind, that the Traverſer was the man.

What then is the further evidence adduced by the *Crown?*—A young gentleman for his private amuſement bought a paper, containing that letter ſigned *Marcus*, which is charged as the libel—he carried it home, gave it to his father, with whom it remained—How far that has eſtabliſhed the fact againſt the Traverſer, of publiſhing that individual paper, you are to judge:—becauſe it has not been contended, if a man once happens to be the publiſher of a paper, that can faſten criminality upon him afterwards—It poſſibly may faſten negligence, or careleſſneſs upon him, but does it eſtabliſh, that he publiſhed a falſe libel? Examine, and ſee what the evidence is;—that the witneſs bought a paper in a certain houſe—not ſeeing *Finerty*, or having any

any communication with him. When you couple these parts together—when you recollect that there has been a legislative interference, which took away all doubt, namely, the necessity of a printer lodging in the Stamp-office a copy of every day's publication, authenticated by his own signature, what must you think of a prosecution, which abandons the legislative proof, and substitutes other evidence in its room? Does not this circumstance cogently press itself upon your consciences?—What is become of that paper which ought to have been lodged?—Was it deposited in the office?—If it were and produced, it might shew that the Traverser did not authenticate that particular paper.—Either the paper was lodged, or it was not—If it were not lodged, they had no right to institute this prosecution—they ought to have taken those measures, which the legislature has put into their hands to establish the fact beyond controversy.—If the paper were lodged, I turn it upon them, and say, that the non-production of it must raise a suspicion, that it may have been authenticated by some other signature than that of the Traverser. Therefore the non production of that paper is a powerful argument indeed, and makes the case of the prosecution infinitely weaker, than if no affidavit had ever been directed—if no legislative line had been pointed out for them to pursue. Because if they omitted what they had in their power to enforce, they were guilty of gross negligence, and had no right to institute this prosecution.—If they were not so negligent, why not produce the paper?—One of two things must inevitably follow;—either they were negligent, in not having the paper deposited—or if they were not negligent, but that it was deposited, then the inference follows by implication of law, that the production of it would damn their cause, by shewing that the Traverser had not authenticated by his signature that individual paper containing the libel charged in the indictment.

Therefore, Gentlemen, you see I have gone through two stages or modes resorted to for the purpose of authenticating this paper. After a considerable pause, to enable the Gentlemen for the Crown to eke out their evidence, if per-adventure it could be done, a witness was produced, who said, that when *Finerty* was arrested, he acknowledged himself to be the printer and publisher of *The Press*.—Did he own himself to have been the printer of the paper in question?—No such thing:—Therefore there is nothing

by which men of reaſon, or common ſenſe can faſten criminality upon the Traverſer. This point has already been argued by Mr. CURRAN; therefore I ſhall take up no more of your time upon it at this late hour; but remind you again of the obligation impoſed upon you, that if you have any doubt or heſitation upon the fact, whether the Traverſer did publiſh this particular paper, your are called upon by your conſciences, by your oath—your duty to your fellow citizens, by the ſpirit of the *Engliſh* law and the criminal code eſtabliſhed here, to acquit the Traverſer.—But if, Gentlemen, contrary to my real opinion, and what I cannot believe (except you have ſome private reaſon, or private knowledge not diſcloſed, and if you have you ſhould come forward and offer yourſelves to be examined; it is not too late) you ſhould be ſatisfied, that the Traverſer did in fact publiſh this very paper; then you will have to conſider the ſecond queſtion in the cauſe.

Gentlemen, the ſecond queſtion which you have to conſider is, whether the paper ſtated in the indictment be a *falſe*, *malicious*, and *ſeditious libel*, or not?—You are the Judges to determine upon that, and you will determine it yourſelves. Gentlemen, it is not many years back—not quite five years, ſince the old common law of the land was reſtored by an act of parliament in both countries. Antecedent to that, there had been a ſort of trenching upon the old law relating to libels. The Juries were told, that with regard to the queſtion of libel, they had nothing to do;—they were to find the fact of publication merely, and the Judge was to determine upon the record, whether the matter was libellous, or not. That doctrine is gone to ſleep, and peace be with it. Gentlemen, it now belongs to you to determine, whether the paper charged be falſe, malicious, and ſeditious, or not; becauſe it is not ſufficient to call a paper a libel; it muſt be *falſe*; and if it be, *malice*, by implication of law, attaches upon it; and when that is done, then by implication of law, if it relates to the government, *ſedition* alſo attaches upon it:—Since no man can ſay if the matter publiſhed be falſe, that he was not inſtigated by malicious motives, and when malicious motives appear in a matter relating to government, ſedition is attached upon it.

Then, gentlemen, the queſtion occurs, are the matters charged, *falſe?*—And is there that preſumption ariſing from them, that from the mere ſtatement of them they appear

to

to be falſe?—Several paſſages have been ſelected, and the firſt of them ſtated by the ATTORNEY GENERAL relates to the conviction of a perſon of whom you have all heard, of the name of *William Orr*:—that the conviction was had upon the teſtimony of a man, who appeared to have been perjured. It is not ſtated by the publication, whether the circumſtances from which perjury was attached upon the man were diſcloſed antecedent to the conviction, or not—Therefore, I have a right to ſuppoſe what is moſt favourable to my client, and what muſt have been the caſe to reconcile the verdict to any principle of reaſon or juſtice—I am to ſuppoſe, that thoſe circumſtances might not ariſe during the trial. I muſt feel perſuaded, that if they aroſe during the trial, ſo as to exclude all kind of credit from the witneſs, the learned Judge would have taken the caſe from the determination of the Jury.—I underſtand there was but one ſingle witneſs—(*Here Mr.* FLETCHER *was told there were two witneſſes*)—I underſtand there were two witneſſes, but only one of them ſwore to the nature of the oath.—Thus, I ſhall take it for granted, that antecedent to the conviction, there did not appear ſufficient circumſtances to enable the learned Judge to ſtate to the Jury his doubts of the credit of the witneſs, and therefore conviction followed.

Gentlemen, I am recapitulating the charge, taking it in the moſt offenſive way, and if I can put it in any point of view in which it cannot be falſe, malicious and ſeditious, you muſt acquit the Traverſer.

I ſtated, that conviction followed the evidence—But what followed that?—We are prepared with evidence to ſhew, that intimidation was uſed where intimidation ſhould not have been uſed—that drink was introduced, where the verdict ſhould have been the reſult of cool and ſober reflection;—in a caſe where the ſuſpicion of our criminal code ſwears a man to keep the Jury from all manner of meat or drink, or any thing that may call the thoughts of a Jury from the ſubject matter of their deliberation. Gentlemen, if the fact be ſo, that drink did get in among the Jury; that certain of them were influenced by liquor, and that weakneſs and imbecility of underſtanding not completely in its proper tone and aſſailed by others—if this be the fact and that certain of the Jury did ſanction aſſertions of this kind by ſolemn declaration upon oath, what are you to ſay of ſuch a verdict?—If it ſhould appear to you, that there

there were other affidavits faſtening upon the teſtimony of the witneſs a reaſonable doubt of perjury, I go no further,—If thoſe affidavits did come up to the executive Magiſtrate—if he had an opportunity of reading them, what ſhall I ſay to that meaſure of government which did not think proper to interpoſe between the priſoner and human imbecility and profligacy and ſnatch away the victim of both?—What imputation falls upon that Magiſtrate it is not for me to ſay. I only ſtate what I am inſtructed will appear.—What ſhall you ſay to that part of the paper which charges the verdict to have been obtained by perjury?—There is nothing proved to warrant the ſtatement that it is charged to have been procured by the government of the country.—There are no expreſſions ſtating it to have been ſo—And are you, in caſes where you ſhould be governed by the rules of common parlance, to ſit grammatical weighers of words, in affixing criminality upon any man?—Is it not uſual to ſay, when a man has perjured himſelf without the knowledge of the Crown, and a verdict is had, that ſuch verdict was obtained by perjury?—It does not inſinuate that the Crown procured the perjury—The learned leader of this proſecution would ſpurn at ſuch an idea—I know he would. But what ground is there to ſtate as an inference from this publication, that the writer did charge ſuch a fact? Such an idea cannot by fair deduction be elicited from the paper:—it only ſays, that the verdict proceeded from perjury; and the ſubſequent part, if true, ſufficiently eſtabliſhes what I have already ſtated, namely, that after the Jury retired from the bar, a verdict was procured in a manner that it ought not to be.

Then, Gentlemen, I am warranted to put any poſſible caſe for my client; it is for you to ſay, whether any thing in alleviation be eſtabliſhed by evidence.——Suppoſe, that, with the knowledge of thoſe, whoſe duty it was to know it, this verdict was had upon the teſtimony of a man, where there was a reaſonable ſuſpicion that he did not diſcover the Priſoner's motive—that the verdict was procured by intimidation and the introduction of drink into the Jury box—ſuppoſe theſe facts to be eſtabliſhed—ſuppoſe the evidence we mean to give ſhould induce you to believe, that the verdict was had by perjury, by intimidation—by drink—I aſk you what the feelings of any honeſt man muſt be at ſuch a lamentable picture of the criminal juſtice of the country?

country?—I call upon you to give it a name—Is there any too ſtrong in this paper—Suppoſing the facts to be true, does human language furniſh words or epithets black enough to paint it?

Gentlemen, it is not for me to ſtate how it took place; I am ſtating, that it did take place; and we will ſhew ſtronger evidence of the fact than the counſel for the Crown ſhewed of the fact of publication—evidence of what paſſed in the Jury room, and evidence reſpecting the character of that man, who ſtood in ſuch a ſituation as to have a reaſonable doubt raiſed, whether he told truth, or not.—What muſt be the impreſſion upon your minds after ſuch evidence ſhall be given?

Gentlemen, this is ſtated to be a proſecution in vindication of Government, and the adminiſtration of juſtice. If theſe facts be true, I ſtand forward more completely the advocate of the Government, and the juſtice of the country, by endeavouring to convince you of that honeſt indignation which every honeſt man muſt feel at the recital of them, and which muſt have influenced the writer of the publication in queſtion.—For, gentlemen, do you imagine, that I am the advocate of the libeller of the juſtice of the land?—God forbid!—Educated from my earlieſt days in a knowledge of the laws and conſtitution, with a character unſtained—white as the robe of ermine—I challenge any man to caſt an imputation upon me—Does any man think I would ſupport a publication if I thought it a libel upon the juſtice of the land? No;—the induſtry of any man will only ſhew, that from human inadvertence ſuch a thing might take place; but from the general complexion of our legal proceedings it could not.—Is the juſtice of the land implicated in this charge?—God forbid!—What is implicated in it?—Any general ſyſtem of the Government? No—But that in this individual reſpect, ſuppoſing what I ſtated to be true, the moſt amiable prerogative of the Crown—the flower that ſhould bloom with never fading luſtre—was not exerted. If it was not, I am willing to ſuppoſe, it was occaſioned by ſome of thoſe moments of laſſitude ariſing from an accumulation of buſineſs.—I am to lament to it.—But what is the privilege of the Preſs, the freedom which you are called upon to preſerve? Does it conſiſt in expoſing the errors of men in their private capacity—or poiſoning the ſource of domeſtic felicity?—No ſuch thing:—that is the abominable licentiouſneſs of the

Preſs

Preſs which ought to be reſtrained. But, gentlemen, when you are told, that the liberty of the Preſs is the ſupport of every free government—what is it?—Is it not the privilege of man, *bonâ fide*, to ſtate before the tribunal of the public, a public abuſe?—For what purpoſe is the Preſs to call upon a public officer, but to correct an error, if it be capable of correction:—if not, to caution him againſt committing it again? What is the right, if errors cannot be attributed to the government?

Gentlemen, you are told, that this is the blackeſt of all libels. It contains ſtrong language—But the queſtion is—Is it *falſe?*—I hold in my hand a paper, called a libel—proſecuted as ſuch before a Jury of *England*, the celebrated letter which *Junius* wrote to the King.—What are the paſſages in that paper?—It is too late to take up your attention with many of them—One or two I will read:

"The people of *England* are loyal to the houſe of *Hanover*, not from a vain preference of one family to another, but from a conviction that the eſtabliſhment of that family was neceſſary to the ſupport of their civil and religious liberties. This, Sir, is a principle of allegiance equally ſolid and rational, fit for Engliſhmen to adopt, and well worthy of your Majeſty's encouragement We cannot be long deluded by nominal diſtinctions. The name of *Stuart*, of itſelf, is only contemptible;—armed with the ſovereign authority, their principles were formidable. The Prince who imitates their conduct, ſhould be warned by their example; and while he plumes himſelf upon the ſecurity of his title to the Crown, ſhould remember, that as it was acquired by one revolution, it may be loſt by another?

Again, the ſame writer ſays—"The people of *Ireland* have been uniformly plundered and oppreſſed. In return they give you every day freſh marks of their reſentment—They deſpiſe the miſerable Governor you have ſent them, becauſe he is the creature of Lord *Bute:* nor is it from any natural confuſion in their ideas, that they are ſo ready confound the original of a King with the diſgraceful repreſentation of him."

Gentlemen, why have I read ſo much from that celebrated letter?—It is notorious, that *Woodfall*, the Printer, was proſecuted for that letter, and found guilty of *publiſhing only*. No judgment ever followed that verdict; and

Gentlemen,

Gentlemen, if a Jury of *Engliſhmen*, in the heart of *London*, where Majeſty itſelf reſides, and not the delegated repreſentative of political power, the King was told, that *his title to the Crown was acquired by one revolution, and might be loſt by another*, whence comes the aſſertion of the counſel, that ſuch a flagitious libel as the preſent is not to be found in the annals of the law?—I put them ſide by ſide—judge between them.—There the whole code of the law was called in queſtion—the proſecution of *Wilkes* and ſeveral others was called in queſtion—Here the conviction of an individual is ſaid to have been had by ways that were not proper, and therefore he called for mercy. If the freedom of the preſs in *England* ſo far back, in the time of the *American* war, when *rebellion* raiſed its ſtandard, but which hiſtory calls a ſtruggle for the deareſt rights of man—if this ſort of attack could be made in the midſt of the city of *London*, bleſſed with the preſence of Majeſty itſelf, a juſt, humane and religious Prince—if *Engliſhmen* know the value of the conſtitution as *Iriſhmen* ought to do—if they found *publication only*—Have I not a right to argue, that ſuppoſing this verdict againſt *Orr* to have been obtained in the manner I have ſtated, did it not call for the liberty of the preſs to animadvert upon it, and does ſuch animadverſion deſerve the name of *libel?*—Does it deſerve the name of libel to tell the Government to remedy that which if not remedied, might alienate the affections of the people?—I meddle not with the language or expreſſions of the paper:—Theſe are but the trappings and plumage of the bird. They are inferior to the poliſhed, two-edged ſword of *Junius*, but that is not the queſtion:—the queſtion is, whether the writer *bonâ fide* ſtated the fact?—or whether with the malice of the devil he fabricated this ſtory to bring diſgrace upon the Government, and to alienate the affections of the people from them?—If he did the latter, find him guilty—I am the firſt to ſay you ſhould. But, Gentlemen, if there be ground for ſaying it, what is the freedom of the Preſs?—Does it conſiſt in panegyriſing Government, and libelling independent men? Does the liberty of the Preſs conſiſt in libelling that bright offſpring of your native ſoil, the *Earl* of MOIRA?—Has he no ſtake in the country?—Has he not bled in its cauſe?—Is that the liberty of the Preſs?—Or is Government to be panegyriſed, when it is wrong?—Would it be the liberty of the Preſs to ſay, ſuppoſing the facts ſtated to be true, that the trial of *Orr* was ſatisfactory

to

to every honeſt and good man?—It is true, ſome ſort of imputation was flung upon the witneſs who ſwore to the criminality, but every honeſt man ſaw the folly of it.—As for drink, it was only to recreate the weary ſpirits of the Jury:—Some ſuſtenance was neceſſary—from weakneſs they could not bring in ſuch a verdict, *omni exceptione major*—no imputation attaches, but the contrary, and ſhall government be blamed for carrying into execution a verdict ſo found?—No ſuch thing; but every paper ſhall proclaim the correctneſs, the clemency and humanity of ſuch a proceeding!—Is that the liberty of the Preſs?—If it be, it is not that liberty which procured our preſent conſtitution—That is not the liberty of the preſs, which put down ſhip money—That is not the liberty of the preſs which eſtabliſhed the *Habeas Corpus* act—That is not the liberty of the preſs, which brought the preſent King to the Throne, which he holds by the aſſent of his people, and which I hope he may long enjoy—What are we not indebted to the preſs for?—Was it not the libels upon the Catholic Religion which produced the reformation?—Was it not the preſs which prevented money being taken from the ſubject?—The publications of the preſs, in the buſineſs of the *Seven Biſhops* put down the diſpenſing power. To what do you owe the *Britiſh* conſtitution?—Did ſome man catch the divine illumination from Heaven and promulgate it to the People?—No:—But abuſe heaped upon abuſe of their rights rouſed them to a ſenſe of their privileges—Was it panegyrics upon the Governments which corrected their errors?—Certainly not—Therefore, Gentlemen, I come home to that which I ſet out from—the liberty of the preſs is that inherent right in every man to animadvert upon the abuſes of Government, and which right has produced every other right, which you now enjoy.—Government can go on without panegyric—they can be comforted without it—they do not call every day for food of that ſpecies—His Excellency can live without it—But I aſk you again, does the liberty of the preſs conſiſt in panegyriſing Government, or libelling individuals obnoxious to them?

The caſe comes to this:—You have the authority of the ATTORNEY GENERAL, that this is a proſecution in which the liberty of the Preſs is concerned—I ſay ſo too—That it is to vindicate the Government of the ſtate—I ſay ſo too—That it is a proſecution to vindicate the adminiſtration of juſtice—I ſay ſo too—it is a vindication in this way,

that

that if facts of that kind, which have been ſtated, have taken place, and we have evidence ſufficient to induce reaſonable men to think ſo, the liberty of the preſs was well exerted, whether diſcreetly—whether with genuine, pure politeneſs, I cannot ſay, in publiſhing what it has. I am not aware that you are appointed Judges of the language of libels, or are impanelled to try what is the politeſt mode of telling a man, he has done wrong. Is want of grammar, or of polite breeding to inflict a puniſhment upon the Traverſer—No, Gentlemen, you will ſay, that if this be a publication, containing reproof for improper conduct, that it is not falſe, when we lay before you evidence to ſhew that it is true—If it be true, malice attaches not upon it; and if it be not falſe, or malicious, where is the ſedition?—I ſhall not trouble you further upon this point.

Another part of this paper relates to the recall of Lord *Fitzwilliam.* Is this proſecution to vindicate the ways of Mr. *Pitt*, which are marvellous indeed! The paper then ſtates, in coarſe and vulgar language, that there are rapine, burnings and deſolation throughout the country. I call upon you to lay your hands upon your hearts, as God ſhall judge you—Are there burnings and deſolation throughout *Ireland?*—I put it in ſo many words—Read the proclamations day after day, month after month, week after week—What do they ſay?—What is it appears in theſe polite publications in which *no* libels are to be found?—You know the papers I mean;—never libellous—never contaminated—How many pariſhes, baronies and counties are put out of the King's peace?—Are there theſe enormities?—If there be, it is ſufficient for the man, ſtating that deſolation had taken place in the kingdom. The ſtatement of theſe facts by a noble Peer is more to his honour, than that he derives his blood from the *Plantagenets* of old:—Lord *Moira* offered to prove at the bar of the Houſe of Lords in *England* facts which came within his own knowledge, vindicating his ſtatement. Have you not heard that the ſame facts were offered to be proved at the bar of your own Houſe of Commons?—If not, you are the only men in the community who have not heard it—What follows?—Could ſuch a ſtatement be made by that illuſtrious man, if it were not founded?—I truſt he will come here and make the ſame ſtatement. Was not his offer of proof refuſed?—What follows?—Was there not reaſonable ground to ſtate that diſturbance and deſolation followed the advancement of the

preſent executive magiſtrate?—Was there any foundation for ſtating, that Lord *Fitzwilliam* ought not to have been removed?—That meaſures which would have reconciled five-ſixths of the ſubjects were ready to take place had he remained, and I aſk you, was the writer juſtified in putting upon paper, that much miſery has followed the change of the Government?—Or can you ſay, againſt a maſs of evidence, that the writer invented all this in the malignity of his heart?—The counſel for the Crown ſaid never was malice ſo diabolical—ſtating deſolation and burnings—Have you ſeen nothing of them?—Have you ſeen no appearance of a military Government?—Do you ſay it is all conjecture?—All fancy?—Or not fancy, but diabolical invention, hatched by *Lucifer* to vilify the King's Government?—If it be ſo, find the Traverſer guilty. You ought to ſhew it is falſe—Convince the world by your verdict—If that be your mode of reaſoning—if you are ſo convinced—find a verdict againſt him—I am the firſt to call for it.

Gentlemen, you have been often told of the bleſſings of the conſtitution and you are deſired to look at the ſiſter kingdom. I call upon you, to look at her with a ſteady eye—Look at the conduct of Juries in that country—Look at their conduct in the caſe of *Tooke*—Their verdict in the caſe of *Thelwal* and *Hardy*—In all theſe brought forward by the exiſting adminiſtration to feel the pulſe of the people; the proſecutors were defeated and therefore the public peace ſuffered no diſturbance there. Look at *England* then with a ſteady eye—*oculo é retorto*—If you take a leſſon from that country, do not imitate her when ſhe is wrong—but deviate ſometimes into rectitude.

Gentlemen, I ſhall not trouble you with any other paſſage, or others which are of an inferior nature; but ſhall take leave with adjuring you to conſider, whether there be evidence to convince you, that the Traverſer did publiſh this paper—And if you ſhould be ſatisfied of that, then to conſider well, whether it be falſe, and intended as a malicious miſrepreſentation of facts.—I have been educated in a reſpect for the laws. I continue to have reſpect for them, and I am the firſt to conjure you to find him guilty, if you are ſatisfied of thoſe facts.——But if he be a well intentioned man, having a reaſonable ground to induce him to think there was ſomething wrong, he was well warranted to uſe the liberty of the preſs, in ſtating ſuch matter, and in ſuch caſe you cannot find him guilty, becauſe by ſo doing,

doing, you would find the matter to be falſe and ſeditious, when you were convinced it was not.

Lord YELVERTON, Examined.

Q. I beg your Lordſhip to look at the hand-writing ſubſcribed to that affidavit?

A. That is my hand-writing, I believe.

Q. And that? *(ſhewing a ſecond affidavit.)*

A. I believe the name YELVERTON ſubſcribed to this, is my hand-writing.

Q. Your Lordſhip tried WILLIAM ORR?

A. I did.

Q. You tranſmitted a recommendation from the Jury to the Lord Lieutenant?

A. I did.

Q. Does your Lordſhip recollect how often he was reſpited?

A. According to the beſt of my recollection he was reſpited twice.——Three times—if I may mention the reſpite of his execution at the aſſizes to tranſmit the recommendation of the Jury, I then ſent to Mr. PELHAM:—I had an anſwer, that the LORD LIEUTENANT was not in town, had no opportunity of conſulting, and therefore, for the preſent, he could do no more than recommend a reſpite for ten days.—As well as I recollect, I poſtponed the ſentence for ſixteen days, in order to give time for the recommendation of the Jury, and what other recommendation the unfortunate man could procure to enforce its effect, if any he could.—I recollect, that after I came to town, another reſpite was granted for a few days, I believe from *Monday* to *Thurſday*, and then further for a few days more.—I cannot be preciſe.

Q. Does your Lordſhip know the Rev. Dr. *Macartney*'s hand-writing?

A. I do not recollect, that I ever ſaw him write—I know him very well—I knew him ſo long ago, as when we were in College together; but I cannot ſay, whether this be his hand-writing, or not.

Q. Does your Lordſhip know, whether Dr. *Macartney* laid any document before Government reſpecting *Wheatly?*

A. There was.

Q. What

Q. Can you ſay, whether that was the document?
A. I cannot.
Q. What was the nature of the document he laid before Government—Was it an imputation upon the character of *Wheatly?*

Mr. ATTORNEY GENERAL. My Lord, I object to any parol evidence being given of the contents of any paper, or affidavit.

Lord YELVERTON. Sitting where I am—I am in the judgment of the Court, whether I ſhould anſwer—But I would have it underſtood, that I have no perſonal objection to the queſtion.

Mr. *Juſtice* DOWNES. I underſtand from the ſtatement of counſel, that the Traverſer means to offer this evidence, by way of juſtification—Is that the object of it?—

Mr. SAMPSON. Yes, my Lord.

Mr. *Juſtice* DOWNES. I am decidedly of opinion, that ſuch evidence is not admiſſible.

Mr. SAMPSON. Does your Lordſhip permit me to aſk as to the ſtate of the country?—Will your Lordſhip permit me to aſk the witneſs, what has come to his actual knowledge?

Mr. ATTORNEY GENERAL. My Lord, I object to ſuch evidence; it has no relation to this trial.

Mr. *Juſtice* DOWNES. It has been held at all periods of time as the law of the land, that ſuch evidence is not admiſſible.

Mr. SAMPSON. Does your Lordſhip hold it not to be admiſſible, to go into evidence of the truth of the libel?

Mr. *Juſtice* DOWNES. I do expreſsly hold it. I am clear, that ſuch evidence is not admiſſible——

Mr. ORR. After what has fallen from your Lordſhip, it is with very great deference I ſhould offer any thing with a hope of ſhaking your opinion upon the point as to the truth of the publication, in order to enable the jury to determine whether it be a libel, or not.

Mr.

Mr. *Juſtice* DOWNES. I hold the law to be ſo clear in the time of Lord *Coke*, and ſince, upon this point, that it is not now admiſſible to debate.—The act of parliament which paſſed in *England*, relating to the trial of libels, and the proceedings attending the paſſing of that act, have put us in poſſeſſion of an authority too ſtrong to admit of debate. The authority I allude to is the queſtion put to the twelve Judges of *England*, when the bill was in progreſs through both houſes of parliament.—One of the queſtions was—"Is the truth, or falſehood of the written, or printed "paper material, or to be left to the Jury upon the trial "of an indictment, or information for a libel; or does it "make any difference in this reſpect, whether the epithet "*falſe* be, or be not uſed in the indictment or informa-"tion?"—And to that queſtion, the Judges anſwered unanimouſly, "That the truth, or falſehood of a written, "or printed paper is not material, or to be left to the Jury "on the trial of an indictment, or information for a libel, "We conſider this doctrine ſo firmly ſettled, and ſo eſſen-"tially neceſſary to the maintenance of the King's peace, "and the good order of Society, that it cannot now be "drawn into debate."

Mr. ORR. My Lord, all that I ſhall mention now is, that in the caſe of the *Seven Biſhops*, who were tried for a libel upon the King's Government in decrying the diſpenſing power, they were permitted to give evidence of the truth of their writing, and the rolls of parliament were produced, to ſhew, that by law, the King had no ſuch power; and I do not conſider the deciſion of *Powell* and *Holloway*, the Judges who admitted that evidence, as leſs conſtitutional, becauſe they were diſplaced by King *James* for that opinion.

Mr. *Juſtice* DOWNES. If I required any authority to ſtrengthen the opinion I have given, the act of parliament would ſtrengthen it; becauſe the opinion of the Judges in *England* was given during the progreſs of the bill, through the two houſes of parliament:—the legiſlature had the unanimous opinion of all the Judges, and they have not thought fit to alter the law in that particular by the act of parliament, either in *England* or *Ireland*.

E. COOKE,

E. Cooke, Eſq. Sworn.

Q. You hold a ſituation in the Secretary's office?

A. I do.

Q. Do you recollect a recommendation having been tranſmitted to your office from the Judges who tried *Orr*, as the recommendation of the Jury, for mercy?

A. I recollect ſuch a recommendation was tranſmitted.

Q. Do you recollect any paper being brought to your office reſpecting the trial of *Orr*, by a perſon of the name of *Macartney*, a Juſtice of peace?

Mr. Attorney General. I object to that queſtion.

Mr. M'Nally. I only aſk as to the fact of the paper being ſent. I do not aſk what the contents were.

Mr. *Juſtice* Downes. How does that bear upon this caſe?

Mr. M'Nally. To ſhew that the mercy, which was recommended, was denied.

Mr. Attorney General. Undoubtedly, *Orr* was convicted and executed.

Mr. M'Nally—*to the witneſs*. Did not the Jury recommend mercy to be extended?

Mr. Attorney General. I object to that queſtion; this is an attempt to prove the truth of the libel.

Mr. *Juſtice* Downes. You are in poſſeſſion of my opinion, that ſuch matter is not examinable into.

Mr. Curran. *My Lord*, I do not feel that we have any evidence, not ſubject to the objection now made. It was our intention to have offered a good deal of evidence as to ſome concomitant facts: but under the opinion which your Lordſhip ſeems to entertain, I do not think that ſuch evidence can ſtand entirely clear of the objection founded upon that opinion. And tho' ſuch evidence might be offered under diſtinctions that might effectually keep clear of your Lordſhip's opinion, yet we do not think it would be acting with candour to attempt it. Therefore, my Lord, we ſay, we do not mean to offer any more evidence, and with your Lordſhip's permiſſion, I wiſh to addreſs ſome obſervations to your Lordſhip, and to you,

Gentlemen

Gentlemen of the Jury, upon the nature of the charge now before you, and upon the grounds upon which it does appear to my humble judgment it is your duty to conſider the caſe, and alſo upon the extent of the authority which the law has given you in caſes of this kind.

And, Gentlemen, in the perilous and agitated ſtate of this unhappy country, I do not know a more important queſtion for your conſideration than that now ſubmitted to you. I am ſorry any thing has been ſaid on either ſide to bias your mind, and to diſturb that deliberate reflection whoſe deciſion alone can give quiet, if quiet can be given to the public, and to bear that character which ought to be ſtamped upon every honeſt verdict of a Jury.

Gentlemen, however I may regret it, I cannot but obſerve into how great a latitude of ſtatement this caſe has been branched.—Gentlemen, you are ſtanding in an awful ſituation indeed!—The ſituation of the country has been adverted to—you muſt feel it, and you muſt feel, that under all that agitation of public mind, you are called upon to decide a cauſe affecting the liberty of a fellow ſubject, who has not had the privilege of calling one of you as his judge, or of objecting to one of you as not altogether indifferent in the cauſe.

This is a proſecution at the moment of public terror, and public ferment, brought forward avowedly, by the executive power of the ſtate. Gentlemen, this is not a time to trifle with you. A more artful Advocate would probably begin his addreſs by complimenting your patriotiſm, and by felicitating his client upon the happy ſelection of his Jury, and upon that unſuſpected impartiality in which if he was innocent he might be ſafe. You muſt be conſcious, gentlemen of the Jury, that ſuch idle verbiage as that could not convey either my ſentiments or my client's upon that ſubject. It is a time too deeply commoved for ſuch inſincerity. You know and we know upon what occaſion you are come, and by whom you have been choſen; you are come to try an accuſation profeſſedly brought forward by the ſtate, choſen by a Sheriff who is nominated by that ſtate——

A cry of *No! No!* from the counſel for the Crown.

Mr. CURRAN. Well!—not nominated, but *approved* of by the LORD LIEUTENANT!—I will not now go into ſuch idle diſtinctions—I am not now to enquire into the nature of

of ſuch elections—I ſtop not to enquire to whom that Corporation belongs by whom that Sheriff is ſaid to be elected. But I ſtate that you, Gentlemen, are not the Jury which my client would have choſen, I repeat, that not a man of you has been called to that box by the voice of my client; that he has not had the power of objecting to a ſingle man of you; and you yourſelves muſt feel under what influence you are choſen; yet let me ſay, I would not waſte myſelf in an unavailing defence, if I did not ſuppoſe you to poſſeſs integrity of heart; if I ſuppoſed you the ſervile inſtuments of Power I would ſcorn to play upon you—But I warn you, that coolneſs and impartiality of judgment has not been the recommendation to the office which you are now called upon to fill—at a moment when this unhappy land is ſhaken to its center by the dreadful conflicts between the different branches of the community;—between thoſe who call themſelves the partizans of liberty, and thoſe who call themſelves the partizans of power – between the advocates of infliction, and the advocates of ſuffering—upon ſuch a queſtion, and at ſuch a ſeaſon as the preſent can any man be at a loſs to gueſs to what claſs of character and opinion a friend to either party would reſort for that jury which was to decide between both.

Gentlemen, I ſtate not this as any paltry ſneer at your probity.—But I ſtate it as a great matter of fact, that you may make a magnanimous effort of your judgments to redeem yourſelves, if unworthy imputations of ſuppoſed bias or paſſion, or partiality may have called you into the box, let me warn you of the ground upon which you ſtand,—of the awful reſponſibility in which you are placed to your own conſciences and to your country, and let me remind you, that you have it in your power to refute and to puniſh ſo vile an expectation by the integrity of your verdict. That is the reaſon why I ſtate that you are not the ſelection of my client; and let me remind you, that you have it now in your power to ſhew to as many Iriſhmen as yet linger in their country that all law and juſtice have not taken their flight with our proſperity and our peace—that the ſanctity of an oath, and the honeſty of a Jury are not yet dead amongſt us; and that if our courts of juſtice are ſo often ſuperſeded by ſo many ſtrange and terrible tribunals, it is not becauſe they are deficient either in wiſdom or virtue.

Gentlemen

Gentlemen, this is no cauſe of private defamation—it is not the caſe of a libeller diſturbing the repoſe of a peaceful fire-ſide, or wounding female honour, and expoſing domeſtic tranſactions to public view—but it is the caſe, and ſo it has been ſtated in the firſt inſtance, of a libel upon the executive magiſtrate of the country—a man holding the higheſt ſituation which can be held in this country and therefore liable to be watched and examined by all the ſubjects of it. The man who exerciſes great official functions muſt be liable to general obſervation, and therefore if it be competent to the Preſs to ſpeak of any man, it is competent to ſpeak of ſuch a man and his meaſures.

Gentlemen, it is my duty to tell you, that the law, with reſpect to libels has been conſiderably changed of late. Not long ſince, it was held to be the law of *England* and *Ireland*, that in a caſe of libel, the Jury were to come into the box, having no authority whatever, ſave that of finding, whether the innuendo's were true, and whether the publication was proved, or not. But the libellous nature of that publication, as well as the guilt, or innocence of the man, were conſidered as excluſively belonging to the Court to determine. Thus the intention of the party, and of courſe the truth or falſehood of the publication, by being drawn to the deciſion of the Court, which can try no matter of fact, ceaſed to be triable at all, and were of neceſſity pronounced to be immaterial. Such in a technical ſyſtem is the inevitable conſequence of admitting any principle not founded in truth. In order to rectify that, which was juſtly conceived to be an encroachment and uſurpation upon the true and antient principles of our law, an act of Parliament was made, which totally diſcredits that formerly received opinion. For that reſtitution of juſtice the Britiſh ſubject is indebted to the moſt diſtinguiſhed patrons of her law and Conſtitution; and I am happy to ſay to you, that though we can claim no ſhare in the glory of the exertion, we have the full benefit of the ſucceſs. The act in both countries ſays, that the Jury ſhall upon the matter in charge give their verdict of guilty or not. You have therefore your duty much extended, and your character infinitely more at ſtake by that extenſion of your juriſdiction. You are now anſwerable to the public for your verdict, not upon the paltry proof of innuendo's, or of publication, but upon the whole body of the matter of fact.—You are to decide upon the entire caſe, upon

its broadeſt grounds, and under all its circumſtances, and of courſe, you are to determine whether this publication be a falſe or ſcandalous libel:—falſe in fact, and publiſhed with the ſeditious purpoſe alleged, of bringing the government into ſcandal, and of inciting the people to reſiſtance againſt their rulers.

Gentlemen, having ſtated to you the law upon this ſubject, and the great extent of your juriſdiction, I ſhall beg leave to recur to the diſtinction to which I have already made ſome alluſions—It is the diſtinction between public animadverſions upon the character of private individuals, and thoſe which are made upon the meaſures of government, and the perſons who conduct them.—The former may be called *perſonal*, and the latter *political* animadverſion.—No two things can be more different in their nature, nor in the point of view in which they are to be looked at by a Jury. The criminality of a mere perſonal libel conſiſts in this,—that it tends to a breach of the peace:—it tends to provoke all the vindictive paroxyſms of exaſperated vanity, or the deeper and more deadly vengeance of irritated pride. The truth is, few men ſee at once, that they cannot be hurt ſo much as they think by the mere battery of a newſpaper. Men do not reflect, that every character has a natural ſtation from which it cannot be effectually degraded, and beyond which it cannot be raiſed, by the bawling of a news-hawker. If it be wantonly aſperſed, it is but for a ſeaſon, and that a ſhort one;—it emerges like the moon from a paſſing cloud, to whatever original brightneſs it poſſeſſed; it carries with it an inſeparable antidote in the avowal that it comes from an enemy; and vainly will that enemy bend the bow or feather the arrow, if the point of it be not ſupplied by the conduct of the intended victim. In vain may that enemy revile, and harmleſs muſt be his invective againſt any man, if he does not ſpeak of him that language to the world which his own conſcience ſpeaks of him to himſelf. But, gentlemen, it is right that the law, and that you ſhould hold the ſtricteſt hand over this kind of public animadverſion, which drags humility and innocence:—which wounds and terrifies—which deſtroys the cordiality and peace of domeſtic life;—and which without eradicating a ſingle vice, or a ſingle folly, plants a thouſand thorns in the human breaſt.

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In ſuch caſes I admit, that the truth of a charge ſhould not juſtify its publication. If a private man be charged with a crime he ought to be proſecuted in a court of juſtice, where he may be puniſhed if the charge be true, and the accuſer, if it be falſe. But far different do I deem of the freedom of political publication. The ſalutary reſtraint of the former ſpecies, which I talked of, is found in the general law of all ſocieties whatever:—but the more enlarged freedom of the preſs for which I contend in political publication, I conceive to be founded in the peculiar nature of the Britiſh Conſtitution, and to flow directly from the contract upon which the Britiſh Government hath been placed by the Revolution. By the Britiſh Conſtitution, the power of the ſtate is a truſt commi ted by the People, upon certain conditions, by the violation of which it may be abdicated by thoſe who hold and reſumed by thoſe who conferred it; the real ſecurity therefore of the Britiſh ſceptre is the ſentiment and opinion of the people, and it is conſequently their duty and their right to obſerve the conduct of government, and it is the privilege of every man to give the people juſt and full information upon that important ſubject.

Hence, Gentlemen, the liberty of the preſs is inſeperably twined with the liberty of the people. The preſs is the great public *Monitor*—its duty is that of the hiſtorian and the witneſs—*Nil falſi audeat, nil veri non audeat dicere*—that its horizon ſhall extend to the fartheſt verge and limit of truth; that beyond that limit it ſhall not dare to paſs;—that it ſhall ſpeak truth to the King in the hearing of the people, and to the people in the hearing of the King; that it ſhall not perplex either the one, or the other with falſe alarm, leſt it loſe its character for veracity, and become an unheeded warner of real danger, and vainly warn them of that political ſin of which the certain wages and inevitable conſequences are death.

Gentlemen, having ſtated the law and what I conceive to be the principles upon which it is founded, let me ſtate to you the ſubject of this trial which has been brought before you by the indictment—by the ſtatement of counſel and by the evidence. The caſe ought to have been confined to the indictment alone; but the learned counſel has taken a much wider range, and has endeavoured to force upon your conſideration extraneous and irrelevant facts, for reaſons, which it is my duty to explain

Gentlemen,

Gentlemen, the indictment charges that the Traverſer publiſhed a falſe, ſcandalous and ſeditious libel againſt the LORD LIEUTENANT of *Ireland* tending to bring his government into diſrepute, and to alienate the affections of the people. It might have been expected, that without ſtating any other, the counſel for the Crown would have gone directly into proof of this allegation; but inſtead of doing ſo, he has gone into a moſt extraordinary length of preliminary obſervations, and an alluſion to facts, and ſometimes an aſſertion of facts which I was ſurprized at hearing, until I ſaw the drift of thoſe alluſions and thoſe aſſertions. Whether you have been fairly and candidly dealt with by him, or are now honeſtly dealt with by me, you muſt be the judges, and conſcious am I, that nothing but the moſt grievous neceſſity can in any inſtance compel him to be either uncandid or unfair: He has been pleaſed to ſay, that this publication ſigned "*Marcus*" is only a part of *a ſyſtem* purſued by that paper—That *The Preſs* itſelf is to be conſidered as a mere ſecondary and inſtrumental part of an entire preconcerted ſyſtem, contrived for the purpoſe of exciting the people to a reſiſtance againſt their rulers—tending to traduce the rulers of their country, and to excite an abhorrence of the meaſures of government, of the laws, and of the adminiſtration of juſtice.

So widely has the charge been ſtated.—I feel myſelf bewildered in the unexpected extent of it.—But perhaps it is, notwithſtanding, too narrow in ſome points, though it is too extenſive in others.

Let me aſk you, however, whether it be fair treatment if men upon their oaths, to inſinuate to them, that the general character of a newſpaper is to have an influence upon their minds, when they are to judge of a particular publication? What men muſt you be ſuppoſed to be, when it is thought, that in a court of juſtice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, ſo ſcandalous of late in this country, of raiſing a vulgar and mercenary cry againſt whatever man, or whatever principle it is thought neceſſary to put down; and I ſhall therefore merely leave it to your own pride to ſuggeſt upon what foundation it could be hoped, that a ſenſeleſs clamour of this kind againſt a ſeries of newſpapers with which the preſent Traverſer may not have had the leaſt connection, and not one of which

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is now produced before you, could be echoed back by the yell of a Jury upon their oaths.—I truſt, gentlemen, you ſee that this has nothing to do with the caſe now before you.

Again, let me aſk you, what has this caſe to do with the adminiſtration of juſtice?—If by that is meant the *judicial* adminiſtration of juſtice.—If this were a libel upon the judicial adminiſtration of juſtice, you would ſcarcely find an advocate of twenty years ſtanding at the bar, ſo little improved by his experience as to attempt to vindicate an attack upon the judicial adminiſtration of juſtice.—Two highly reſpected Judges bore a part in the trial alluded to:—There is not one word of reproach upon either of them, or their venerable and reſpected characters. Then I ſay, in one word, it is no libel upon the judicial adminiſtration of juſtice.

But, gentlemen, I tell you what it is—It is a charge upon his Majeſty's Miniſters to whom has been committed that moſt valuable and important branch of the prerogative, that of extending mercy to thoſe to whom it ought to be extended. It is ſtated ſtrongly in that libel, if it be one, that that department has not been filled as it ought to be—that the Magiſtrate has not adminiſtered the ſword, put into his hand, with mercy to the ſubject.—That is the charge contained in this publication.—Gentlemen, the language of it has been abuſed—Be pleaſed to conſider you are not trying the *author*—but the *printer*, who did not write, and poſſibly could not write the paper in queſtion, but who ſeeing the honeſt intention and fair ſpirit of its contents, cauſed it to be publiſhed. A printer may be anſwerable for the ſubſtance of what he prints and publiſhes, but ſurely can never be held reſponſible for the language, or the ſtyle.

Gentlemen, other matters have been mentioned which I muſt repeat for the ſame purpoſe, namely, to ſhew you, that they have nothing to do with the caſe now before the Court. The ATTORNEY GENERAL has been pleaſed to ſay, that he comes forward in this proſecution, as the real advocate of the liberty of the preſs, and he has laid down one poſition, with part of which I agree, but in the extent of which I do not coincide. He has been pleaſed to ſay, that the Conſtitution can never be loſt, while the freedom of the Preſs remains, and that nothing can deſtroy the liberty of the Preſs, but its own licentiouſneſs—

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As to that, he might as well have told you, that there is but one mortal diſeaſe of which a man can die, and when he comes forward to extinguiſh this paper in the ruin of the printer by a ſtate proſecution, you muſt judge how candidly he is treating you, both in the fact and in the conſequence; he reaſons, as he muſt do, if he recommended the putting a very dear friend to death as a preventative againſt the ſingle diſeaſe of which he might otherwiſe chance to die.—Gentlemen, the Preſs has died the death of tyranny in every country of *Europe* ſave *England*—it has periſhed under the ſword of tyrants, and why? Becauſe it is the ſhield of the people againſt the power of ſuch tyrants, and therefore it is the object of the enemy to diſarm the people of that ſhield which is to protect them—And is it in *Ireland* that we are told licentiouſneſs is the only diſeaſe that can be mortal to the Preſs?—Has he heard of nothing elſe that has been fatal to the freedom of publication?—I know not whether the printer of the *Northern Star* may have heard of ſuch things in his captivity; but I know that his wife and his children are well apprized, that a Preſs may be deſtroyed in the open day, not by its own licentiouſneſs; but by the licentiouſneſs of a military force.

Gentlemen, I know you ſhould hold a ſalutary check over the licentiouſneſs of the Preſs:—it is neceſſary for its own ſake; it is neceſſary, leſt the innocent ſhould ſuffer—leſt the public ſhould looſe a watchful centinel, and leſt the ſword ſhould be waved over the ſubject in oppreſſion or injuſtice.—But when you are guarding againſt its licentiouſneſs, beware how you do that which may ſilence it altogether—Look to this paper, and let me aſk? Does it comport with the liberty of the Preſs, if a bad public meaſure be adopted, to ſtate to the people that it is a bad public meaſure? Is it competent to the Preſs, if a wrong thing be done, to ſay it has been done?—Or is all queſtion about truth or falſehood out of the caſe altogether? For there is not a word ſtated in the paper, that is not avowed from the bar.

If you are not bold enough or wiſe enough to conſider the liberty of the Preſs, in the way I have been ſtating, that is, that it ſhould be competent to the Preſs to animadvert fully and ſtrongly upon public meaſures, I ſhould be ſorry for the act of Parliament which put you into a ſituation, you had not fortitude or integrity to fill—that

thoſe

thoſe caſes were not ſtill left to the cool diſpaſſionate mind of the Judges, rather than to a bigotted Jury, loſt and bewildered in the panic of the times, and not able to find their integrity or their underſtandings.—You are inhabitants of a ſuffering country—Let me exhort you therefore to protect the enjoyment of that liberty of public thought and of public ſpeech, without which you are leſs than men—and to guard it on the one hand from abuſes that muſt diſgrace it, and on the other from that power againſt which you are its only natural refuge.

You are told this proſecution is inſtituted by the ſtate in order to aſſert the liberty of the Preſs—Gentlemen, the poſition ſtarts a train of thought, of melancholy retroſpect, and direful proſpect, to which I did not think the learned counſel would have been very forward to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what conſequences the government has diſplayed its patriotiſm by this ſort of proſecutions? As to the motives:—Does hiſtory give you a ſingle inſtance in which the ſtate has been provoked to theſe conflicts, except by the fear of truth, and by the love of vengeance.—You have been carried back to the ſtate proſecutions of former years—Were they inſtituted to promote the welfare of the country?—or was it when the government was ſinking under the crumbling ruins of the falling empire itſelf?—When the temples of juſtice were prophaned with the convictions of a RUSSELL and a SIDNEY!—I ſee you turn your thoughts to the reign of the ſecond *James*.—I ſee you turn your eyes to thoſe pages of governmental abandonment, of popular degradation, of expiring liberty, of mercileſs and ſanguinary perſecution—when language died away in the hearts of the people—when humanity had no ear, becauſe liberty had no tongue—that miſerable period in which the fallen and abject ſtate of man might have almoſt been an argument in the mouth of the atheiſt and the blaſphemer againſt the exiſtence of an all juſt and all wiſe firſt cauſe—if the dying fury of the *Stuarts* had not prepared the glories of thoſe patriots who eſtabliſhed the Revolution, and thereby refuted the impious inference, by ſhewing, that if man deſcends, it is not in his own proper motion—that it is with labour and with pain, and that he can continue to ſink only, until by the force and preſſure of the deſcent, the ſpring of his immortal faculties acquires that recuperative

energy

energy and effort which hurries him as many miles aloft. It is at ſuch periods as preceded the Revolution, that the ſtate ſeeks ſhelter in the deſtruction of the preſs—It is in a period like that, that the tyrant prepares for the attack upon the people, by deſtroying the liberty of the preſs—by taking away that ſhield of wiſdom and of virtue, behind which the people are invulnerable—in whoſe pure and poliſhed convex, ere the lifted blow has fallen, the Tyrant beholds his diminiſhed image and is turned into ſtone. It is then that Tyranny is at its laſt gaſp—then the honeſt man dares not ſpeak, becauſe truth is too dreadful to be told—then the proud Man ſcorns to ſpeak, but like a ſturdy Phyſician, baffled by the wayward exceſſes of a dying patient, retires indignantly from the bed of an unhappy wretch, whoſe ear is too faſtidious to bear the ſound of wholeſome advice—whoſe palate is too debauched to bear the ſalutary bitter that might redeem him, and therefore leaves him to the felonious piety of the ſlaves that talk to him of life, and ſtrip him before he is cold.

I do not care, Gentlemen, to exhauſt too much of your attention by following this ſubject through the laſt century with much minuteneſs: but the facts are too recent in your mind not to ſhew you, that the liberty of the preſs and the liberty of the people ſink and riſe together;—that the liberty of ſpeaking, and the liberty of acting have ſhared exactly the ſame fate. You muſt have obſerved in *England*, that their fate has been the ſame in the ſucceſſive viciſſitudes of their late depreſſion, and ſorry am I to add, that this country has exhibited a melancholy proof of their inſeperabledeſtiny, through the variousand further ſtages of deterioration, down to the period of their preſent final extinction, when the Conſtitution has given place to the ſword, and the only printer in *Ireland*, who dares to ſpeak for the people, is now a priſoner in the dock.

Gentlemen, the learned counſel has made the real ſubject of this proſecution ſo ſmall a part of his ſtatement, and has led you into ſo wide a range, certainly as neceſſary to the object, as inapplicable to the ſubject of the proſecution, that I truſt you will think me excuſeable in ſomewhat following his example.—Glad am I to find, that I have the authority of the ſame example for coming at laſt to what ought to be the only object of this trial.

This

This, Gentlemen, is a charge made, in very ſtrong language, againſt the LORD LIEUTENANT of *Ireland*; he is charged with having groſsly, and inhumanly denied the mercy of the Crown, where the writer alleges, it ought to have been extended. Mercy is one of the prerogatives of the Crown—a great truſt repoſed in the Crown for the good of the people;—it is committed to the wiſdom and diſcretion of Majeſty,—a diſcretion to be exerciſed like the diſcretion of a Court of Juſtice in the ſpirit of the Law and the Conſtitution, "*diſcernere per legem quid ſit juſtum*;" to decree according to the laws of eternal juſtice; and where thoſe laws require an exerciſe of the truſt, it is only a diſcharge of the great duty which the King owes the people; for he is ſworn to adminiſter juſtice in mercy.

Gentlemen, having ſtated this, ſee what the facts are; they have been ſtated by the counſel for the Crown, and therefore are not now to be contradicted:—

A Perſon of the name of *William Orr* was indicted for having adminiſtered the oath of an *United Iriſhman:* that oath with which you are now ſo well acquainted; an oath pledging the Party who takes it to religious union, parliamentary reform, and not to give evidence againſt any Man for any thing done in the ſpirit of that obligation; after a year's impriſonment he was brought to trial, was ſpecially proſecuted by the Crown, and ſworn againſt by a common informer of the name of *Wheatly*, who was the only witneſs.

Mr. ATTORNEY GENERAL. The fact is not ſo.

Mr. CURRAN. I do recollect there was a ſecond witneſs, but his teſtimony did not go to the material parts of the caſe. *Wheatly*, the principal witneſs, had himſelf taken the obligation, and upon his teſtimony, Mr. *Orr* was convicted under the inſurrection act, which makes the adminiſtering ſuch an obligation a felony of death. The Jury recommended him to mercy;—The Judge, with the humanity becoming his character, tranſmitted the recommendation to the noble Proſecutor in this caſe—Two of the Jury made affidavits in court, that liquor had been conveyed into their room, and that their verdict was the reſult of intimidation and drink;—that under the impreſſion of threats, and worn down by watching and intoxication, they had given a verdict of guilty againſt him, though they believed him to be innocent.—It is alſo ſtated, that further

enquiries were made reſpecting the witneſs, which ended in a diſcovery of his former infamous life and character:—that a reſpite was granted—a ſecond and a third one was ſent, in order to give time, as Mr. ATTORNEY GENERAL has ſaid, to ſee, whether mercy *could* be extended to him or not, and that with a knowledge of all theſe circumſtances, his Excellency did finally determine, that mercy ſhould not be extended to him, and that he was accordingly executed upon that verdict.

This is the charge ſtated in the publication, and which Mr ATTORNEY GENERAL ſays, is falſe and malicious, and intended to degrade the adminiſtration of juſtice.

So far as relates to the Judges, I mentioned before, this publication is ſilent—they had nothing more to do with the verdict, than to record it—there is not the ſmalleſt foundation of complaint againſt them; they preſided at the trial with the mildneſs and temper which became them upon ſo awful an occaſion, as the trial of life and death, and the fate of the unfortunate man cannot with any juſtice be imputed to them. The charge relates to a department of juſtice, which could not begin, until the duty of the Judge was cloſed; it was after the party ceaſed to be a ſubject of trial, that the queſtion commenced, whether he was an object of mercy. Sorry ſhould I be, that with reſpect to this unfortunate man, any cenſure ſhould be flung upon thoſe Judges—Sure I am, that if they had been charged with inhumanity, or injuſtice, and they had condeſcended to proſecute the reviler, they would not have come forward in the face of the public to ſay, that it was immaterial, whether the charge was true or not—Sure I am, their firſt object would have been to ſhew, that it was falſe, and I proclaim it loudly, that ready ſhould I have been, an eye witneſs of the fact, to have diſcharged the debt of ancient friendſhip, of private reſpect, and of public duty, and upon my oath to have repelled the falſehood of ſuch an imputation. Upon this ſubject, the preſence of thoſe venerable Judges reſtrains me—that might be conſtrued adulation in their preſence, which would be only juſtice, if they were abſent, and I have ſaid thus much merely to undeceive you, if you have been made to believe their characters have any community of cauſe with the LORD LIEUTENANT of *Ireland*.

But, Gentlemen, the charge is confined to the LORD LIEUTENANT of *Ireland*, and againſt him it is made in the

the ſtrongeſt terms, which I ſuppoſe the writer could find. —It is alleged that the Viceroy of *Ireland* cruelly abuſed the prerogative of royal mercy, in ſuffering a man under ſuch circumſtances to periſh like a common malefactor— For this, the ATTORNEY GENERAL calls for your conviction as a falſe and ſcandalous libel, and after ſtating himſelf all the facts which I have mentioned, he tells you, that you ought to find it falſe and ſcandalous, though he almoſt in words admits it is not falſe, and has reſiſted the admiſſion of the evidence by which we offered to prove every word of it to be true.

Gentlemen, there is no evidence laid before you, to contradict the charge, and therefore I am at liberty to take it up in this way, that the writer thought himſelf warrantable in aſſerting what he did. Therefore the caſe comes to this:—Here was a verdict blackened by the diſavowal of two of the perſons who found it; the Jury recommend;— the witneſs is impeached—and after all, the Convict is led out to a public execution. That is the fact and ground upon which the writer charges the executive power with not having performed his duty as he ought.

Gentlemen, I proteſt to God, I ſcarcely know how to ſpeak upon this ſubject.—Was it cruel to execute the man?—That is not the queſtion—The queſtion is not, whether ſuch ſtrong expreſſions ought to be uſed; but the queſtion is, are you warranted in calling the paper a falſe, ſcandalous, and ſeditious libel, if the writer, under the impreſſions I have mentioned, thought himſelf authoriſed in point of fact in ſtating it?

Here, Gentlemen, give me leave to remind you of the parties before you. The Traverſer is a printer, who follows that profeſſion for bread, and who at a time of great public miſery and terror, when the people are reſtrained by law from debating under any delegated form—when the few conſtituents that we have are prevented by force from meeting in their own perſons to deliberate, or to petition; when every other newſpaper in *Ireland* is put down by force, or purchaſed by the Adminiſtration, (though here, Gentlemen, perhaps I ought to beg your pardon for ſtating without authority—I recollect, when we attempted to examine as to the number of newſpapers in the pay of the caſtle, that evidence was objected to) at a ſeaſon like this, the Traverſer has had the courage, or the folly, to print the publication in queſtion, from no motive under Heaven of malice,

malice, or of vengeance, but in the mere duty which he owes to his family and to the public.

His proſecutor is the King's Miniſter in *Ireland*; in that character does the learned gentleman mean to ſay, that his conduct is not a fair ſubject of public obſervation?—What is the liberty of the Preſs?—If Government do improper things, is the Great Inquiſitor of the Preſs to remain gagged and blind?—Let me not be underſtood as uttering any ſentiment of my own as upon any authority of my own. In this place I feel I have no right to do ſo. The ſubject matter and the obſervations naturally ariſing therefrom form the full extent of my duty and ſituation. Do you think that the fact charged was a cruel and ſanguinary exerciſe of the delegated power of mercy? If it was, do you think it criminal in any man to ſay to the public, that he thought ſo? Or is the very exceſs of the atrocity to give the ſilence of the grave to the tranſaction?—Are you to confine the Preſs to the mere ſuburbs of Authority, and not ſuffer it to approach that citadel where power and where abuſe ſo often dwell together?—Where does the learned counſel find his authority for that in the law, or the practice of the ſiſter country?—Have the virtues or the exalted ſtation, or the general love of his people preſerved the ſacred perſon, even of the royal maſter of the proſecutor from the aſperity and the intemperance of public cenſure, unfounded as it ever muſt be, with any perſonal reſpect to his Majeſty, in juſtice or truth?—Have the great abilities of Mr. *Pitt*—or the gigantic talents of his greater adverſary, Mr. *Fox*, protected either of them from the inſolent familiarity, and for ought I know, the injuſtice with which writers have treated them?—What latitude of invective has the King's Miniſter eſcaped upon the ſubject of the preſent unhappy war?—Is there an epithet of contumely, or of reproach, that hatred, or that fancy can ſuggeſt that are not publicly laviſhed upon him—Do you not find the words, advocate of deſpotiſm, robber of the public treaſure, murderer of the King's ſubjects, debaucher of the public morality, degrader of the conſtitution, tarniſher of the Britiſh glory, deſtroyer of the Britiſh Empire, by frequency of uſe, loſe all meaning whatſoever, and dwindle into terms, not of any peculiar reproach, but of mere ordinary appellation? And why, Gentlemen, is this permitted in that country? I'll tell you why?—Becauſe in that country, they are yet wiſe enough to ſee, that the meaſures of the ſtate are the proper

ſubjects

ſubjects for the freedom of the Preſs—that the principles relating to perſonal ſlander do not apply to rulers, or to miniſters; that to puniſh an attack upon a public miniſter, without any regard to truth, but merely becauſe of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, I pray you, is likely to happen in ſuch a caſe? Is it the tendency of ſuch publications to provoke Mr. *Pitt* or Mr. *Dundas* to break the head of the writer, if they ſhould happen to meet him?—No, Gentlemen, in that country this freedom is exerciſed, becauſe the people feel it to be their right; and it is wiſely ſuffered to paſs by the ſtate, from a conſciouſneſs, that it would be vain to oppoſe it; a conſciouſneſs confirmed by the event of every incautious experiment. It is ſuffered to paſs from a conviction, that in a court of juſtice at leaſt, the bulwarks of the conſtitution will not be tamely ſurrendered to the ſtate, and that the intended victim, whether clothed in the humble guiſe of honeſt induſtry, or decked in the honours of genius and virtue, and philoſophy—Whether an *Hardy*, or a *Tooke*, will find certain protection in the honeſty and ſpirit of an *Engliſh* Jury.

Surely Mr. ATTORNEY GENERAL will not carry his doctrine ſo far—Does he mean to ſay, that the liberty of the Preſs conſiſts in publiſhing what no man will read?—That a man may publiſh a joke—but if he ſees a ſword hung over the head of a fellow citizen, he is not to tell him it hangs there, and that a ſingle hair is the only ſecurity between him and deſtruction. I ſhould wiſh to know how far the ATTORNEY GENERAL ſuppoſes it to extend?—Is it to the compoſition of lampoons and madrigals to be ſung down the grates by ragged ballad-mongers to kitchen maids and footmen? I will not ſuppoſe, that he means to confine it to thoſe ebullitions of Billingſgate—to thoſe cataracts of ribaldry and ſcurrility that are daily ſpouting upon the miſeries of our wretched fellow ſufferers, and the unavailing efforts of thoſe who have laboured in their cauſe. Does he ſay, that the Preſs muſt be the repoſitory for adulation upon the Government and calumny upon the People?—Does he ſay, that the Preſs ſhall only ſupply a ſalve for thoſe ſpots and pimples which appear upon the ſurface, but muſt not dare to explore the receſſes of the heart to which that deleterious poiſon has penetrated of which the effects are death? I will not ſuppoſe that he confines it to the poetic licenſe of a birth day ode, or a lampoon upon the people; in which

caſe

caſe I ſhould entirely agree with him, that the truth or the falſehood is as perfectly immaterial to the law, as it is to the laureat—as perfectly unreſtrained by the law of the land, as it is by any law of decency or ſhame, or modeſty, or decorum. I am ſorry, he has not favoured you with his notions of the liberty of the preſs, ſo far as it reſpects the privilege of cenſure or of blame. Suppoſe an Iriſh Viceroy acts a very little abſurdly—may the Preſs venture to be a little reſpectfully comical upon that abſurdity? The learned counſel does not, at leaſt in terms, give a negative to that. But let me go farther to a more material point. Suppoſe an *Iriſh* Viceroy does an act which brings ſcandal upon his maſter—that fills the mind of a reaſonable man with the fear of approaching deſpotiſm, that leaves no hope to the people of preſerving themſelves and their children from chains but in common confederacy for common ſafety—What is an honeſt man in that caſe to do?—The learned counſel has not given you his opinion. I will therefore venture to give you my far humbler thought upon the ſubject. I think an honeſt man ought to tell the people frankly and boldly of their peril; and I muſt ſay I can imagine no villainy greater than that of his holding a traitorous ſilence at ſuch a criſis; except the villainy and baſeneſs of proſecuting him for it, or of finding him guilty for ſuch an honeſt diſcharge of his public duty. Is he to ſuffer the ſword to fall upon the heads of his fellow citizens without giving them notice of the danger—and is he to be puniſhed for that conduct by which their lives may have been ſaved?—No, Gentlemen, that is not the doctrine of our law or our Conſtitution. I found myſelf upon the known principle of the Revolution of *England*, namely, that the Crown itſelf may be abdicated by certain abuſes of the truſt repoſed, and that there are poſſible exceſſes of arbitrary power, which it is not only the right, but the bounden duty of every honeſt man to reſiſt at the riſque of his fortune and his life.—If this reaſoning be admitted, and it cannot be denied, if there be any poſſible event in which the people are obliged to look only to themſelves, and are juſtified in doing ſo—Can you be ſo abſurd as to ſay, that it is lawful for the people to act upon it, when it unfortunately does arrive, but that it is criminal in any man to tell them that the miſerable event has actually arrived, or is imminently approaching?—Far am I from inſinuating, that (extreme as it is) this miſery has been matured into any deplorable criſis of

this

this kind, from which I pray, that the almighty God may for ever preſerve us—But I am putting my principle upon the ſtrongeſt ground, and moſt favourable to my opponents, namely, that it never can be criminal to ſay any thing of the Government but what is falſe, and I put this in the extreme, in order to demonſtrate to you, *à fortiori*, that the privilege of ſpeaking truth to the people, which holds in the laſt extremity, muſt alſo obtain in every ſtage of inferior importance; and that however a court may have decided before the late act, that the truth was immaterial in a caſe of libel, that ſince that act, no honeſt Jury can be governed by ſuch a principle.

Upon what ground then, can this paper be called a falſe and malicious libel?—The facts are admitted, therefore the truth or the falſehood is not now ſubmitted to your conſideration—but ſtill you have ample room for the exerciſe of your extenſive juriſdiction; for Mr. ATTORNEY GENERAL tells you that this publication is ſeditious, and tends to inſurrection. How does this follow?—The Executive power of the country is charged with refuſing mercy to an unfortunate victim—that charge is not denied—And Gracious God! Gentlemen, is this the public ſtatement of the King's repreſentative?—I have done a deed, that muſt fill the mind of every thinking man with horror and indignation—this man ſhould not have died—every man that knows it will be alienated from the King's Government, and it will endanger the ſeparation of this diſtracted empire—the wretch ought to have been ſaved—he was ſacrificed. The Traverſer has had the guilt of publiſhing this fact, which I myſelf acknowledge, and I pray you to find him guilty—Is this the caſe which the LORD LIEUTENANT of Ireland brings forward? Is this the principle for which he ventures, at a dreadful criſis like the preſent, to contend in a court of Juſtice? Is this the picture which he wiſhes to hold out of himſelf to the juſtice and humanity of his own countrymen?—Is this the hiſtory which he wiſhes to be read by the poor Iriſhman of the South and of the North, by the ſiſter nation and the Common Enemy?

No, gentlemen, he cannot hold that language—let me—and do you by your verdict defend him, even againſt his own opinion and his own reaſoning. It is ſaid, this paper tends to ſedition and inſurrection—upon what ground can ſuch an idea be ſupported?—after the multitudes who have periſhed in this unhappy land within the laſt three years, and which

has

has been borne with a patience unparalleled in the ſtory of nations, can any man ſuppoſe that the fate of a ſingle individual could lead to reſiſtance or inſurrection?—But ſuppoſe that it might, what ought to be the conduct of an honeſt man at ſuch a ſeaſon? ſhould it not be to apprize the Government and the country of the approaching danger?—ſhould it not be to ſay to the Viceroy, you will drive the people to madneſs—if you perſevere—you will alienate the Iriſh nation, you will diſtract the common force—you will invite the common enemy—ſhould not an honeſt man ſay to the people—"the meaſure of your affliction is great, but you need not reſort to any deſperate expedient—If the King's miniſter is defective in humanity or wiſdom, his royal maſter is abounding in both"—at ſuch a moment can you be ſo ſenſeleſs as not to feel, that any one of you ought to hold ſuch language?—or is it poſſible you could be ſo infatuated as to puniſh the man, who was honeſt enough to hold it?—or is it poſſible you could bring yourſelves to ſay to your country when the meaſures of Government are pregnant with danger and impending miſchief—that at ſuch a ſeaſon, the preſs ought to ſleep upon its poſt, or ſound nothing but adulation and praiſe, acting like the perfidious watchman on his round, who ſees the robber wrenching the bolts, or the flames burſting from the windows, while the inhabitant is wrapt in ſleep, and cries out, "That the morning is fair, and all is well"

If ſuch be your notions of the duty of the Preſs, give in your verdict—a verdict which tells the people, they have not leave to ſpeak—where a contrary verdict given with boldneſs might ſave the lives of uncounted thouſands.—Proclaim to *Europe*, that upon a ſubject like this, in a conteſt between mercy and a want of mercy and the ſufferings of the people, you have ſhrunk from your duty. Compare your conduct with that of the Juries in *England* and ſee how you will ſtand the examination—ſee whether you do an honeſt or a worthy act, by putting down the only paper which exiſts in *Ireland*, and by cloſing for ever all diſcuſſion upon public meaſures—Gentlemen, you ought to conſider, that man is ſubject to a number of reſtleſs paſſions—What is the ſtate of this country?—Agitated from one end to the other upon great national points, whether right or wrong I will not now enquire, but do you ſay, they ſhall not be ſpoken of?—In *England*, you ſee the utmoſt extravagance of licentiouſneſs indulged:—Here the repreſentative

the repreſentative of the Crown ſays, that Mercy ſhall not be diſpenſed—and will you proclaim, that no man ſhall ſay it ought?—What is the conſequence?—That you ſuffer thoſe contending paſſions to burn with ungovernable fury and refuſe to the public heat even the chance of being cooled or ventilated by the unobſtructed courſe of public ſentiment and public diſcuſſion.

Gentlemen, let me put a queſtion to you. I do not pretend to ſay it is ſimilar to the preſent in all its points,—I not pretend to compare the humble fortunes of Mr. *Orr* with the ſainted names of *Ruſſel* or of *Sidney*; ſtill leſs am I willing to find any likeneſs between the preſent period and the year 1683.—But I will put a queſtion to you, completely parallel in principle;—when the unhappy and miſguided Monarch of that day had ſhed the ſacred blood, which their noble hearts had matured into a fit cement of revolution—if any honeſt Engliſhman had been brought to trial for daring to proclaim to the world his abhorrence of ſuch a deed, what would you have thought of the Engliſh Jury that would have ſaid, "We know in our hearts that what he ſaid, was true and honeſt; but we will ſay upon our oaths, that it is falſe and criminal, and we will by that baſe ſubſerviency add another item to the catalogue of public wrongs, and another argument for the neceſſity of appeal to Heaven for redreſs?"

Gentlemen, when I ſhew you the full extent of your political rights and remedies; when I anſwer thoſe ſlanderers of Britiſh liberty, who degrade the Monarch into a deſpot, who degrade the ſubject into a ſlave, who degrade the ſtedfaſtneſs of law into the waywardneſs of will, when I ſhew you the ineſtimable ſtores of conſtitutional wealth ſo dearly acquired by our anceſtors, and ſo ſolemnly bequeathed—and when I ſhew you how much of that precious inheritance has yet ſurvived all the prodigality of their poſterity, I am far from ſaying, that I ſtand in need of it all upon the preſent occaſion—No, Gentlemen, far am I indeed from ſuch a ſentiment. No man more deeply than myſelf deplores the preſent melancholy ſtate of our unhappy country. Neither does any man more fervently wiſh for the return of peace and tranquillity, through the natural ways of mercy and juſtice. I have ſeen too much of force and violence to hope much good from the continuance of them on the one ſide or the retaliation from another. I have ſeen too much of late of political re-building, not to have obſerved,

that to demoliſh is not the ſhorteſt way to repair. It is with pain and anguiſh, that I ſhould ſearch for the miſerable right of breaking ancient ties, or going in queſt of new relations and untried adventures.—No, Gentlemen, the cauſe of my client reſts not on theſe ſad privileges of deſpair.

I truſt therefore, Gentlemen, without going ſo far, that as to the intention of exciting inſurrection, you muſt ſee it cannot be found in this publication—that it is the mere idle, unſupported imputation of panic or of falſehood;—and that as to the law, ſo far has he been from tranſgreſſing the limits of the conſtitution, that whole regions lie between him and thoſe regions which he has not trod, and which I pray to heaven, it may never be neceſſary for any of us to tread.

Gentlemen, Mr. ATTORNEY GENERAL has been pleaſed to abuſe this publication for the foul and inſolent familiarity of its addreſs—Does the learned counſel conſider the freedom of the Preſs to be the licenſe of offering that paltry and ſhabby adulation, which no man ought to ſtoop to utter or to hear.—I do clearly underſtand his idea, he ſuppoſes that the freedom of the Preſs is like the freedom of a King's jeſter, who inſtead of reproving the faults of which Majeſty ought to be aſhamed, is baſe and cunning enough, under the maſk of ſervile and adulatory cenſure, to ſtroke down and pamper thoſe vices of which it is fooliſh enough to be vain.

The learned counſel would not have the Preſs preſume to tell the Viceroy, that the prerogative of mercy is a truſt for the benefit of the ſubject, and not a gaudy feather ſtuck into the diadem, to ſhake in the wind, and by its idle waving amuſe the vanity of the wearer.—He would have the Preſs all fierceneſs to the people, and all ſycophancy to power; he would have it conſider the mad and phrenetic depopulations of authority, like the awful and inſcrutable diſpenſations of providence, and to ſay to the unfeeling and deſpotic ſpoiler in the language of the religion he blaſphemes—"The Lord hath given and "the Lord hath taken away—Bleſſed be the name of the "Lord!!!

Let me aſk Mr. ATTORNEY GENERAL, has he ever known proſecutions by the ſtate againſt the Preſs for unmerited panegyric and undeſerved praiſe?—Has he ever ſeen the rulers of any country bring forward a proſecution from motives of filial piety for libels upon their departed anceſtors?

anceſtors?—Has he read that *Elizabeth* directed any of thoſe ſtate proſecutions againſt the libels which the divines of her times had written againſt her Catholic ſiſter—or againſt the other libels, which the ſame divines had written againſt her Proteſtant father?—No, gentlemen, we read no ſuch thing—But we know ſhe did bring forward a proſecution from motives of perſonal reſentment, and we know that a Jury was found time ſerving and mean enough to give a verdict, which ſhe was aſhamed to carry into effect.

But again, let me aſk, what does the learned counſel mean when he abuſes the language of this publication?—Does he mean, that the air of it is ruſtic and uncourtly? Does he mean to ſay, that becauſe the poet Laureat might not approve of the expreſſion, that therefore you are to find the Traverſer guilty? Does he mean to ſay, that when *Marcus* preſumed to aſcend the ſteps of the Caſtle, and to addreſs the Sovereign power of *Ireland*, he did not turn out his toes as he ought to have done? A Jury of dancing-maſters might decide that queſtion, and gentlemen of that profeſſion might be witneſſes. Does he mean that the language is coarſe and vulgar, and therefore you ought to find the Traverſer guilty? I do not pretend to be a mighty grammarian, or a formidable critic; perhaps it may be ſaid, perhaps with truth, that the language is in ſome places diſreſpectful—But, gentlemen, I look not to the *garb*—I look to the *man*; and if I find humanity in the loweſt ſtation, pining over ſufferings and breaking into indignation at the fate of others—if I ſee even ragged poverty "grumbling pity" at calamity;—I love ſuch feelings, I love ſuch men, and

"I could hug the greaſy rogues they pleaſe me."

But, gentlemen, you are not called upon as grammarians or critics. You are called upon to protect the government againſt inſurrection, not cenſure, and in the diſcharge of that duty, let me ſuggeſt this to you, that a free Preſs can be ſupported only by the efforts of men who feel the prompting ſting of real or ſuppoſed capacity—who write from the enthuſiaſm of virtue, or the ambition of praiſe, and over whom, if you exerciſe the rigour of grammatical cenſorſhip, you will inſpire them with as mean an opinion of your integrity, as your wiſdom, and inevitably drive them from their poſt—And if you do ſo, rely upon it, you will reduce the ſpirit of publication, and with

with it, the Preſs of this country, to what it for a long interval has been, the regiſter of births and fairs, and funerals, and the general abuſe of the people and their friends.

But, gentlemen, to examine this charge of vulgarity and diſreſpect more cloſely, give me leave to aſk you, whether you know of any language which could have adequately deſcribed the idea of mercy denied where it ought to have been granted—or of any phraſe vigorous enough to convey the indignation which an honeſt man would have felt upon ſuch a ſubject? Let me beg of you for a moment to ſuppoſe, that any one of you had been the writer of this ſtrong and ſevere animadverſion upon the LORD LIEUTENANT, and that you had been the witneſs of that lamentable and never to be forgotten cataſtrophe.—Let me ſuppoſe that you had known the charge upon which Mr. *Orr* was apprehended, the charge of abjuring that bigotry, which had torn and diſgraced his country—of pledging himſelf to reſtore the people to their place in the Conſtitution, and of binding himſelf never to be the betrayer of his fellow labourers in that enterpriſe—that you had ſeen him upon that charge torn from his induſtry and confined in a gaol—that through the ſlow and lingering progreſs of twelve tedious months you had ſeen him confined in a dungeon, ſhut out from the uſe of common air and of his own limbs—that day after day you had marked the unhappy captive, cheered by no ſound, but the cries of his family, or the clanking of his chains—that you had ſeen him at laſt brought to his trial—that you had ſeen the vile and perjured informer depoſing againſt his life—that you had ſeen the drunken, and worn out and terrified Jury give in a verdict of death; that you had ſeen the ſame Jury, when their returning ſobriety had brought back their reaſon, proſtrate themſelves before the humanity of the Bench, and pray that the mercy of the Crown might ſave their characters from the reproach of an involuntary crime, their conſciences from the torture of eternal ſelf condemnation, and their ſouls from the indelible ſtain of innocent blood—Let me ſuppoſe, that you had ſeen the reſpite given, and the contrite and honeſt recommendation tranſmitted to that ſeat, where mercy was preſumed to dwell—that new crimes are diſcovered againſt the informer—that the royal mercy ſeems to relent—that a new reſpite is ſent to the Priſoner—that time is taken to ſee, whether mercy could be extended, or not—that after that period of lingering

gering deliberation paſſed, a third reſpite is tranſmitted—that the unhappy captive himſelf feels the cheering hope of being reſtored to a family that he had adored, to a character that he had never ſtained, and to a country that he had ever loved—that you had ſeen his wife and his children upon their knees, giving thoſe tears of gratitude, which their locked and frozen hearts had refuſed to anguiſh and deſpair, and imploring the bleſſings of eternal providence upon his head, who had graciouſly ſpared the father, and reſtored him to his children.

> " Alas, nor wife, nor children more ſhall he behold,
> " Nor friends, nor ſacred home !"

Often did the weary Dove return to the window of his Ark, but the olive leaf was to him no ſign that the waters had ſubſided. No ſeraph mercy unbars his dungeon, and leads him forth to light and life, but the Miniſter of death hurries him to the ſcene of ſuffering and of ſhame—where unmoved by the hoſtile array of Artillery and armed men, collected together to ſecure—or to inſult or to diſturb him, he dies with a ſolemn declaration of his innocence, and utters his laſt breath in a prayer for the liberty of his country.

Let me now aſk you - if any of you had addreſſed the public ear upon ſo foul and monſtrous a ſubject, in what language would you have conveyed the feelings of horror and indignation? Would you have ſtooped to the meanneſs of qualified complaint? Would you have checked your feelings to ſearch for courtly and gaudy language? Would you have been mean enough—But I entreat your pardon—I have already told you, I do not think meanly of you—Had I thought ſo meanly of you, I could not ſuffer my mind to commune with you as it has done—Had I thought you that baſe and vile inſtrument, attuned by hope and fear into diſcord and falſehood, from whoſe vulgar ſtring no groan of ſuffering could vibrate, no voice of integrity or honour could ſpeak, let me honeſtly tell you, I ſhould have ſcorned to fling my hand acroſs it, I ſhould have left it to a fitter Miniſtrel.—Therefore, Gentlemen, if I do not groſsly err in my opinion of you, I could invent no language upon ſuch a ſubject as this, that muſt not lag behind the rapidity of your feelings, and that would not diſgrace thoſe feelings, if it attempted to deſcribe them.

Gentlemen, I am aware, that the Counſel for the Crown ſeemed to addreſs you with a confidence of a very different kind. He ſeemed to expect a kind and reſpectful ſympathy

from

from you with the feelings of the Caſtle, and the griefs of chided authority—Perhaps, Gentlemen, he may know you better than I do—If he does, he has ſpoken to you as he ought; he has been right in telling you, that if the reprobation of this writer is weak, it is becauſe his genius could not make it ſtronger—he has been right in telling you that his language has not been braided and feſtooned as elegantly as it might—that he has not pinched the miſerable plaits of his phraſeology, nor placed his patches and feathers with that correctneſs of millinery, which became ſo exalted a perſon. If you agree with him, Gentlemen of the Jury—if you think that the man, who at the hazard of his own life endeavours to reſcue from the deep the drowned honour of his country, muſt not preſume upon the guilty familiarity of plucking it up by the locks—I have no more to ſay;—do a courteous thing—Upright and honeſt Jurors! Sworn integrity of your Country!—find a civil and obliging verdict againſt the printer!—And when you have done ſo, march through the ranks of your fellow citizens to your own homes, and bear their looks as you paſs along; retire to the boſom of your families and your children, and when you are preſiding over the morality of the parental board, tell thoſe infants, who are to be the future men of *Ireland*, the hiſtory of this day. Form their young minds by your precepts, and confirm thoſe precepts by your own example—Teach them how diſcreetly allegiance may be perjured upon the table, or loyalty be forſworn in the Jury box;—and when you have done ſo, tell them the ſtory of *Orr*;—tell them of his captivity, of his children, of his crime, of his hopes, of his diſappointments, of his courage and his death; and when you find your little hearers hanging from your lips—when you ſee their eyes overflow with ſympathy and ſorrow, and their young hearts burſting with the pangs of anticipated orphanage and deſolation, tell them, that you had the boldneſs, and the juſtice to ſtigmatize the monſter—who had dared to publiſh the tranſaction!

Gentlemen, I told you before, that the conduct of the LORD LIEUTENANT forms but a ſmall part indeed of the ſubject of this trial. If the vindication of his mere perſonal character had been, as it ought to have been, the ſole object of this proſecution, I ſhould have felt much regret at ſeeing a perſon of his high conſideration come forward in a court of public juſtice, and in one and the

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ſame breath to admit the truth, and demand the puniſhment of a publication like the preſent—to prevent the chance he might have had of ſuch a publication being diſbelieved, and by a proſecution like this, to give to the paſſing ſtricture of a newſpaper, that life and body and action and reality that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmoſt concern, that his name ſhould have been ſoiled by being mixed in a queſtion of which it is the mere pretext and ſcape goat. Mr. ATTORNEY GENERAL was too wiſe to ſtate to you the real queſtion, or the object, which he wiſhed to be anſwered by your verdict. Do you remember, that he was pleaſed to ſay, that this publication was a baſe and foul miſrepreſentation of the virtue and wiſdom of the Government and a falſe and audacious ſtatement to the world, that the King's Government in *Ireland* was baſe enough to pay informers for taking away the lives of the people. Are you aware of the tendency of this ſtatement?—or do you recollect the ſituation of your country.

Let me aſk you, Gentlemen, what is the ſituation of this country now?—and what has been its ſituation for ſome years back?—Your verdict will involve theſe conſiderations, for this is not a paltry caſe, involving only the motives of the writer of this paper; the ſtatement of the learned counſel opened a much more comprehenſive inveſtigation. You well know the obſtinate conflict between Prerogative and Privilege which has diſtracted this country for the laſt fifteen years. I do not mean the privileges of the Houſe of Commons, I mean the privileges of the People. You cannot but know, for I dare ſay ſome of you may have been actors in them, the various modes by which the People laboured to approach their object. Delegations, Conventions, Remonſtrances, Reſolutions, Petitions to the Parliament, Petitions to the Throne. I do not wiſh on an occaſion like this, to ſtate to you with any acrimony, the various modes of reſiſtance that were uſed on the other ſide; but you are all old enough to remember the ſucceſſion of ſtatutes by which the People were deprived of what they had ſuppoſed to be the known and eſtabliſhed fundamental rights of the Conſtitution; the right of public diſcuſſion, the right of public petition, the right of bail, the right of trial, the right of arms for ſelf-defence, until at laſt every relic of popular privilege was loſt in military force, the Preſs became extinguiſhed

extinguiſhed and the ſtate found its laſt entrenchment in the grave of the Conſtitution. As little can you be ſtrangers to the tremendous confederations of hundreds of thouſands of our Countrymen, of the nature and the objects of which ſuch various opinions have been propagated and entertained. The Writer of *Marcus* has preſumed to cenſure the recall of Lord *Fitzwilliam* as well as the meaſures of the preſent Viceroy. I do not enter into this ſubject, but you cannot yourſelves forget, that the conciliatory meaſures of the former noble Lord had produced an almoſt miraculous unanimity in *Ireland*, and I am ſure it is not without pain that you can reflect how unfortunately the conduct of his ſucceſſor has terminated. I neither know nor condemn his intentions, they may have been the beſt; but dreadful have been their effects; every new act of coercion has been followed by ſome new ſyſtem of diſcontent, or ſome new combination of reſiſtance; in this deplorable ſtate of affairs, agitated and convulſed within and menaced by a formidable foe from without, it was hoped that ſafety might be found in union and conciliation, and repeated applications were made to the Parliament of *Ireland* for an enquiry into the complaints of the People; they were made in vain. The ſame ſubject was brought before the Commons of *England* by Mr. *Fox* who ventured to aſcribe the perilous ſtate of *Ireland* to the ſeverity of its Government. Even his ſtupendous abilities excited by the livelieſt ſympathy with our ſufferings, and animated by the moſt diſintereſted zeal to reſtore the ſtrength with the union of the Empire, were repeatedly exerted without ſucceſs. The fact of diſcontent was denied; the fact of coercion was denied, and the conſequence was, coercion became more implacable and diſcontent more threatening and irreconcileable.

Another ſtruggle has been made in the Lords of *Great Britain* by our illuſtrious countryman, of whom I do not wonder that my learned friend ſhould have obſerved, how much virtue can fling pedigree into the ſhade—and how much the tranſient honour of a body inherited from man is obſcured by the luſtre of an intellect derived from God.—He, after being an eye witneſs of this country, preſented a miſerable picture of what he had ſeen—and to the aſtoniſhment of every man in *Ireland*, the exiſtence of thoſe facts were ventured to be denied. He offered to prove them on oath at the bar of the Houſe of Peers:—He was not permitted to do ſo. The conduct of the preſent Viceroy was

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juſtified and applauded, and the neceſſity of continuing that conduct was inſiſted upon, as the only means of preſerving the Conſtitution, the Peace, and the Proſperity of *Ireland*.

The learned counſel has aſſerted that the paper which he proſecutes is only part of a ſyſtem formed to miſrepreſent the ſtate of *Ireland*, and the conduct of its Government. Do you not therefore diſcover that his object is to procure a verdict to ſanction the parliaments of both countries in refuſing an enquiry into your grievances?—Let me aſk you then, Are you prepared to ſay upon your oath, that thoſe meaſures of coercion, which are daily practiſed, are abſolutely neceſſary, and ought to be continued?—It is not upon *Finerty* you are ſitting in judgment—But you are ſitting in judgment upon the lives and liberties of the inhabitants of more than half of *Ireland*. You are to ſay, that it is a foul proceeding to condemn the government of *Ireland*—that it is a foul act, founded in foul motives, and originating in falſhood and ſedition—that it is an attack upon a Government under which the people are proſperous and happy—that juſtice is adminiſtered with mercy—that the ſtatements made in *Great Britain* are falſe—are the effuſions of party or of diſcontent—that all is mildneſs and tranquillity—that there are no burnings, no tranſportations—that you never travel by the light of conflagrations—that the gaols are not crowded month after month, from which priſoners are taken out not for trial, but for embarkation!—Theſe are the queſtions upon which, I ſay, you muſt virtually decide. It is in vain, that the counſel for the Crown may tell you, I am miſrepreſenting the caſe—that I am endeavouring to raiſe falſe fears, and to take advantage of your paſſions—that the queſtion is, whether this paper be a libel or not, and that the circumſtances of the country have nothing to do with it. Such aſſertions muſt be vain: the ſtatement of the counſel for the Crown has forced the introduction of thoſe important topics, and I appeal to your own hearts, whether the country is miſrepreſented, and whether the Government is miſrepreſented.

I tell you therefore, Gentlemen of the Jury, it is not with reſpect to Mr. *Orr* or Mr. *Finerty* that your verdict is now ſought; you are called upon, on your oaths to ſay, that the Government is wiſe and merciful, the people proſperous and happy; that military law ought to be conti-

nued; that the Conſtitution could not with ſafety be reſtored to *Ireland*, and that the ſtatements of a contrary import by your advocates in either country were libellous and falſe. I tell you theſe are the queſtions, and I aſk you, if you can have the front to give the expected anſwer in the face of a community who know the country as well as you do. Let me aſk you how you could reconcile with ſuch a verdict the gaols, the tenders, the gibbets, the conflagrations, the murders, the proclamations that we hear of every day in the ſtreets, and ſee every day in the country. What are the proceſſions of the learned counſel himſelf circuit after circuit? Merciful God! what is the ſtate of *Ireland*, and where ſhall you find the wretched inhabitant of this land?——You may find him perhaps in a gaol—the only place of ſecurity, I had almoſt ſaid, of ordinary habitation!—If you do not find him there, you may ſee him flying with his family from the flames of his own dwelling;—lighted to his dungeon by the conflagration of his hovel.—Or you may find his bones bleaching on the green fields of his country—or you may find him toſſing upon the ſurface of the ocean, and mingling his groans with thoſe tempeſts, leſs ſavage than his perſecutors, that drift him to a returnleſs diſtance from his family and his home—without charge, or trial, or ſentence! Is this a foul miſrepreſentation?—Or can you, with theſe facts ringing in your ears and ſtaring you in the face, ſay upon your oaths they do not exiſt? You are called upon in defiance of ſhame, or truth, or honour, to deny the ſufferings under which you groan, and to flatter the perſecution that tramples you under foot and grinds you to powder!——Gentlemen! I am not accuſtomed to ſpeak of circumſtances of this kind, and though familiariſed as I have been to them, when I come to ſpeak of them, my power fails me—my voice dies within me—I am not able to call upon you—it is now I ought to have ſtrength—it is now I ought to have energy and voice—but I have none.—I am like the unfortunate ſtate of the country—perhaps like you—This is the time in which I ought to ſpeak, if I can, or be dumb for ever; in which if you do not ſpeak as you ought, you ought to be dumb for ever.

What next is complained of by the learned counſel?—That this publication aſſerts, that the conviction of Mr. *Orr* was obtained by bribes adminiſtered by Government to an informer, by whoſe evidence he fell. As to that, I beſeech

beſeech you, gentlemen, to conſider, whether it be a candid repreſentation? Is the learned counſel warranted by the fact—The writer does not ſay, that it was a bribe adminiſtered perſonally or directly by the LORD LIEUTENANT to that witneſs. The ſentence carries no ſuch meaning; if it did, I would rather lay down my brief and quit the court, than riſe the advocate of a filthy ſlander of that kind. But that was not the meaning of the writer—the writer means, that informers are brought forward in the preſent unfortunate ſtate of the country by the hopes of hire and payment—Is that a foul and falſe aſſertion?—or will you upon your oaths ſay to the ſiſter country, that there are no ſuch abominable inſtruments of deſtruction as informers uſed in the ſtate proſecutions in *Ireland?* Let me aſk you honeſtly what do you feel, when in my hearing —when in the face of this audience, you are called upon to give a verdict, that every man of us and every man of you know by the teſtimony of your own eyes to be utterly and abſolutely falſe?—I ſpeak not now of the public proclamations for informers, with a promiſe of ſecrecy and extravagant reward?—I ſpeak not of thoſe unfortunate wretches, who have been ſo often transferred from the table to the dock, and from the dock to the pillory?—I ſpeak of what your own eyes have ſeen day after day during the courſe of this Commiſſion, while you attended this court:—The number of horrid miſcreants, who acknowledged upon their oaths, that they had come from the ſeat of Government—from the very chambers of the Caſtle, where they had been worked upon by the fear of death and the hopes of compenſation to give evidence againſt their fellows.—That the mild, the wholeſome and merciful councils of this Government are holden over thoſe catacombs of living death, where the wretch that is buried a *man*, lies till his heart has time to feſter and diſſolve, and then is dug up an *Informer*.

Is this a picture created by an hag-ridden fancy, or is it fact?—Have you not ſeen him after his reſurrection from that tomb, make his appearance upon your table, the living image of life and death, and the ſupreme arbiter of both?—Have you not marked, when he entered, how the ſtormy wave of the multitude retired at his approach?—Have you not ſeen how the human heart bowed to the awful ſupremacy of his power in the undiſſembled homage of deferential horror?—How his glance, like the lightning of Heaven,

Heaven, ſeemed to rive the body of the accuſed, and mark it for the grave, while his voice warned the devoted wretch of woe and death;—a death which no innocence can eſcape, no art elude, no force reſiſt, no antidote prevent—There was an antidote,—A Juror's oath! But even that adamantine chain, which bound the integrity of man to the throne of eternal juſtice, is ſolved and molten by the breath which iſſues from the mouth of the informer;—conſcience ſwings from her moorings—the appalled and affrighted Juror ſpeaks what his ſoul abhors, and conſults his own ſafety in the ſurrender of the victim:

> Et quæ ſibi quiſque timebat,
> Unius in miſeri exitium converſa tulere.

Informers are worſhipped in the temple of juſtice, even as the Devil has been worſhipped by Pagans and ſavages; even ſo in this wicked country is the informer an object of judicial idolatry; even ſo is he ſoothed by the muſic of human groans, even ſo is he placated and incenſed by the fumes and by the blood of human ſacrifices.

Is this the picture which is denominated a falſe and ſlanderous repreſentation of the ſtate of the country?—But I am detaining you too long;—I muſt have tried your patience. I have been forced into this length by the Counſel for the Proſecution, who has introduced a queſtion of mere politics into a court of criminal juriſdiction. I am not ſurpriſed that it has been done; or that your verdict ſhould be ſolicited as a vote of approbation. I do not wonder that the Government of *Ireland* ſhould ſtand appalled at the ſtate to which we are reduced. I wonder not that they ſhould ſtart at the public voice and labour to ſtifle or to contradict it. I wonder not that at this arduous criſis, when we are threatened with invaſion, and torn and convulſed within, when the very exiſtence of the empire is at ſtake, and when its ſtrongeſt and moſt precious limb is not girt with the ſword for battle, but preſſed by the tourniquet for amputation, that they are terrified at what they have done, and wiſh to exclaim to the ſurviving parts of that empire:—"They cannot ſay, we did it."—I wonder not that they ſhould conſider their conduct as no immaterial queſtion for a court of criminal juriſdiction, and wiſh anxiouſly as on an inqueſt of blood, for the kind acquittal of a friendly jury. I wonder not they ſhould wiſh to cloſe the gulf they have opened, by flinging you into the abyſs —But

—But truſt me, you cannot cloſe it; truſt me neither one nor twelve devoted characters can cloſe it; if it be yet poſſible to cloſe it, it can be done only by truth and honour. Such an effect could no more be wrought by the ſacrifice of a Jury, than by the ſacrifice of *Orr*.

Gentlemen, I have told you of your duty—I have ſtated the extent of your authority; it is not the buſineſs of the Bench to fan the ſacred flame of Patriotiſm in the Jury Box;—You are upon a great forward ground, with the people at your back, and the Government in your front;—you have neither the diſadvantages nor the excuſes of Juries a century ago;—No, thank God, never was there a ſtronger characteriſtic diſtinction between thoſe times upon which no man can reflect without horror and the preſent. You have ſeen this trial conducted with patience and mildneſs by the Court. We have now no *Jefferies* with ſcurvy and vulgar conceits to browbeat the Priſoner or perplex his Counſel. Such has been the improvement of manners, and ſo calm the confidence of integrity, that during the defence of accuſed perſons, the Judges ſit quietly, and ſhew themſelves worthy of their ſituation, by hearing with a mild and merciful patience, the little extravagancies of the Bar, as you ſhould bear with the little extravagancies of the Preſs. The Court is mild and merciful, becauſe if it did not give a temperate ear to paſſion, the Priſoner could not have the benefit of the honeſt feelings of his advocate.

Let me then turn your eyes to that pattern of mildneſs in the Bench.—The Preſs is your advocate;—bear with its exceſs—bear with every thing but its bad intention. If it comes as a villainous ſlanderer, treat it as ſuch—but if it endeavour to raiſe the honour and glory of the country, remember that you reduce its power to a non-entity, if you ſtop its animadverſions upon public meaſures—you ſhould not check the efforts of genius, nor damp the ardour of patriotiſm. In vain will you deſire the bird to ſoar, if you meanly or madly thieve from it its plumage. Beware, leſt under the pretence of bearing down the licentiouſneſs of the preſs, you extinguiſh it altogether—Beware how you rival the venal ferocity of thoſe licentious miſcreants who rob a Printer of the means of bread, and claim from deluded Royalty the reward of integrity and allegiance.

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One word more, Gentlemen, and I have done. I have been hitherto ſpeaking of my client—let me ſay one word in favour of yourſelves and the Public. When the nation is ſinking under the tyranny of debauched counſels, what is it that gives it a chance of being ſaved?—It is that the voice of the public may reach even to the ear of the firſt perſonage in the ſtate—that he may know what the people ſay. Let the patriots heart be ſtill animated by ſhewing that you guard the liberty of the Preſs when it ſpeaks to power with zeal, however unaccompanied by ceremonial. You are now upon the edge of a precipice, to which not many ſteps muſt conduct you: ſtop before you arrive at it; while you are yet upon the brink, while you are yet viſible, let me remind you that the People may at length find repoſe from their troubles, and that you have to chuſe whether you will be numbered among the Inſtruments of their degradation or the means of their deliverance.

Gentlemen, I might ſay, what my learned colleague has ſaid. I did not know that I ſhould have had this duty to perform. I thought I ſhould have ſat as an auditor, not appeared as an actor. I beſeech you, if you think it right to give any conſideration to the arguments I have offered, to conſider them with the ſame honeſt candour with which they are meant.—I cannot be ſuppoſed to be forgetful of my ſituation by introducing any private ſentiments into this diſcuſſion. I know that men thinking long upon one ſubject may imagine they think right. I may impute the ſame infirmity to you:— But I feel ſtrongly the reaſons and baſis of my own judgment.

Gentlemen, I conjure you in the name of your country —on the oath you have taken, and in the preſence of the ever living God, to reflect, that you have your character, your conſciences and perhaps the ultimate deſtiny of your country in your hands—that though the day may ſoon come when our Aſhes ſhall be ſcattered before the winds of heaven, yet the memory of what we do cannot die; it muſt carry down to your poſterity your honour or your ſhame; in that awful name I do therefore again conjure you to have mercy upon your country and upon yourſelves and ſo to judge now as you ſhall hereafter be judged.

Mr. PRIME SERJEANT. *My Lord, and Gentlemen of the Jury.* However wearied and fatigued you muſt be at this advanced period of the day, of which there has been much unneceſſary

unneceſſary conſumption, it becomes my duty to treſpaſs upon you with ſome obſervations, rendered the more neceſſary by the ſingular manner in which my learned friends, the Counſel for the Traverſer, have thought proper to conduct his defence, if *his* defence it can be called; for this the learned Counſel have made ſome excuſe; they told you they were unprepared; but though it were not the hackmied caſe—*a Libeller's defence*—little preparation would ſerve their turn—hence therefore, it cannot be that they have brought forward in his defence much of what they have heretofore, and in another place, ineffectually advanced in the accuſation of others—The learned counſel who ſtated his caſe, ſet out with a well turned eulogium on the Trial by Jury—the ſacred duty of the Jurors and the Court. He told you that with a Jury to doubt, ſhould be to acquit—that it was the bounden duty of the Judge, that his honor and conſcience called upon him, if he doubted—to recommend to mercy. I readily ſubſcribe to a doctrine which I, in my humble ſphere, have uniformly practiſed—but did it occur to the learned counſel, that his panegyric was the moſt pointed condemnation of that libel which made the ſacred duty of the Judge and Jury the object of its calumny? Did it occur to him, that the excellence of the inſtitution was the heavieſt aggravation of the offence of his client?—my learned friend did then in the overflowing of his zeal in the defence of the traverſer, indulge himſelf in a repetition of much that had been alleged by himſelf and others, elſewhere, and in ſtrong and emphatic terms called your attention to the Parliamentary conduct of a noble Lord in another country; and in defence of the traverſer, found occaſion to pronounce a panegyric upon the blood of the *Plantagenets*—How relevant it is for you to judge—but what is moſt ſingular, is, that, as if infected by the libel of which he undertook to be the defender, he ſeemed to forget the ſacred duty of Jurors. He read to you, as I collected, ſome paſſages from the reprobated libel—the letter of *Junius* to the King, and compared them with ſome paſſages of the libel in queſtion, not, I acknowledge, to aſſert the innocence of either, but to ſhew how far the one ſurpaſſed the other in malignity—and he then told you, what the conduct of the Jury was upon the trial of the publiſher of that libel—and called upon you, acting upon your oaths to emulate their conduct by the return of a ſimilar and reprobated verdict—Indeed,

each

each of the learned counſel, in his addreſs you, called upon you to imitate the conduct of Juries in *Great Britain*, acting upon their oaths, and upon the evidence before them —The Juries on the trial of *Hardy*, *Thelwall* and others were held out to you for imitation—was there no *Iriſh* Jury worthy of your imitation?—were the verdicts of the Juries who tried *Jackſon*, *Weldon*, *Dunn* and a long liſt of traitors and conſpirators, which have diſgraced this once happy country ever queſtioned?—all convicted, though defended by the abilities of one of my learned friends.

It is natural that he at leaſt ſhould recur to the ſucceſs of others, and not to his own defeats, for examples to his purpoſe. But if a Jury were to regulate itſelf by any rule but that of evidence, national feeling would prefer a national example. Differing from the learned Counſel for the traverſer—I caution you againſt following any example; blot from your recollection any thing you may before this day have heard upon the ſubject.—attend only to the evidence—reſpect the law, as it may be ſtated to you by the learned Judge—and upon the evidence and the law exerciſe that diſcretion with which the Conſtitution has entruſted you.

The learned Counſel, who ſpoke to the evidence for the traverſer, wiſhed you to recollect much which he ſaid, and to my aſtoniſhment, he omitted to requeſt you to forget much alſo—for he ſet out with telling you that the times were *commoved*, and to tranquillize them, he arraigned—not the ſtatute—that would be nothing, but the Common Law of the Land—he cenſured that law which would not permit the traverſer to give evidence of the truth of the libellous matter —but he did not tell you as I do, that the libeller is thereby, and thereby only, ſecure againſt detection in the moſt libellous falſhood, and your own feelings will tell you that an inadmiſſible offer to prove its truth, is an aggravation of his offence. The learned Counſel, as I conceive, miſtook the law when he informed you, that the traverſer had no right to challenge any of you, as his Jurors, as he did the fact, when he ſtated that you were arrayed by an officer appointed by the Crown—Why thoſe obſervations?—In compliment to to the cauſe of his client, and to diſparage, if poſſible, that verdict which he knew, you, acting upon your oaths, muſt give. This therefore was to be marked as a ſtate proſecution—your verdict was to be conſidered as the verdict of a Jury, againſt whom no challenge lay—and

arrayed

arrayed by an officer of the nomination of the profecutor—But as a Lawyer, I tell you, that a challenge does lie, and that the Sheriffs who returned you, are not nominated by the Crown, or dependant on its approbation. As if infected by the ſpirit of the libel, the learned counſel, if I miſtake not, has told you, that *the ſecurity of a Juror's oath was ſhaken—that Juries capitulating with their fears, and to preſerve their own lives, have complimented the Informer with the lives of the accuſed*—and to impreſs it upon the public mind, has had recourſe to his Claſſic treaſures,

> Et quæ ſibi quiſque timebat
> Unius in miſeri exitium converſa tulere.

Could they afford him no quotation, but one which contributed to lead a credulous nation to its ruin?—*The Trojans believed and were undone*—and I truſt that the learned counſel did not ſee the alarming miſchief of the obſervation—and that he would upon reflection, wiſh it conſigned to oblivion. Did the learned Counſel think that ſuch obſervations could deter men of honour and fortitude from a diſcharge of their duty—or that by *the horror of his fancy pieces* they could be frighted from a recollection of their oaths? The learned counſel has indulged himſelf in a ſplendid, but irrelevant declamation, and repetition of all thoſe ſubjects, which for ſome time paſt have unfortunately agitated this once happy country—you have long ſince read them in the different prints—you have this day heard them—you may compare them; you have long and ſeverely felt their effects.

But I owe it to our honorable profeſſion to tell you, that much is allowable to Counſel in the defence of the accuſed—It may be commendable in them to recur to and make uſe of every topic, however remotely connected, which may contribute to their ſucceſs in the ſacred duty which they have undertaken, and particularly if the caſe (like this) ſhall not admit of any defence.—*Hence I truſt it was and not to commove the country, by franking into the world an impreſſive comment upon this libel*, that that which you expected would have been the defence of the Traverſer, has been nothing more than a vindication of party and opinion, and a repetition of that arraignment of the government of the country which had been before often made by my learned friends, and as often anſwered and refuted—but from us, to whom your attention has been called as proſecuting for the Crown—an attention

which we confidently challenge—a different conduct is expected—We diſdain all addreſs—all inflammatory language —*unadorned facts—plain common ſenſe—the utmoſt good faith with the Court and the Jury are the indiſpenſable duties of proſecutors for the Crown.* How conſcientiouſly we have diſcharged thoſe duties, let even the unfortunate men whom it was our painful duty to proſecute, declare—But I find that example leads me alſo from the ſubject proper for your conſideration—You have already heard that the Traverſer is not brought before you upon a charge officially made by the ATTORNEY GENERAL, but upon a charge made by a Grand Jury of your county, acting and declaring upon their oaths, that the libel in queſtion was publiſhed to moleſt and diſturb the public peace and tranquillity of the kingdom, to diſparage the adminiſtration of juſtice, and to repreſent the Chief Governor as acting inhumanly and wickedly in not extending mercy where he ſhould—Theſe concluſions of the Grand Jury you are not to adopt, unleſs the evidence which has been produced, ſhall upon conſideration call upon you ſo to do—and if it does, I am confident that you will, *regardleſs of the terror of the Traverſer with which my recollection tells me you were menaced.*

Too ſucceſsful have the enemies of this country been in their endeavours to indiſpoſe the people to their political ſituation—But there was one conſoling hold, from which there had been no attempt to remove them—One comfort of which there had been no attempt made to deprive them—*Their confidence in the adminiſtration of juſtice*—for the Traverſer it was reſerved to make a daring attack upon the temple of juſtice and mercy, prophaning its altars and reviling its miniſters—The unfortunate Traverſer, the inſtrument of a party, ſome of them ſpectators poſſibly of the diſgraceful ſituation in which he ſtands—The criminal code immediately affects the maſs of the people, and for the Traverſer it was reſerved to make the firſt attempt to deſecrate the adminiſtration of criminal juſtice, and by vilifying the mild and merciful law of *England*, to prepare the minds of the maſs of the people for *a revolutionary tribunal, and its attendant Guillotine.*

The Traverſer has made an affidavit, that he is the ſole proprietor of the paper in which this libel has appeared—I hope he is ſo—*and that he did not recur to perjury, to qualify himſelf to be a libeller*—There is a circumſtance confirmatory

confirmatory of his affidavit—He has remained in confinement two months upon a bailable offence—it is ſcarcely poſſible, that he ſhould be ſo deſerted, and yet connected with others—It is ſcarcely poſſible, that he *ſhould* be of the *brotherhood*, and yet left in Gaol ſo long—But if it is poſſible, and that he is only the oſtenſible partner in this alarming eſtabliſhment—Let his fate,—let his unbailed ſituation for two months, be a warning to thoſe who may be ſolicited to lend their names to give currency to ſedition—let them recollect that on the day of trial, no defence either was, or could be made for him—He had an hoſt of lawyers of the firſt abilities—*He had all the pride, pomp and circumſtance of a diſtinguiſhed libeller*—His vanity may have been gratified by hearing himſelf connected with the topics of party here and in *Great Britain*—by finding himſelf joined in the ſame ſentence with the names of *Pitt* and *Fox*, and finding his efforts connected with thoſe of a noble Lord in *England*—but if I might preſume to judge—the noble Lord will not feel himſelf much honored by the alliance, which has been formed for him or pleaſed with the coadjutor aſſigned to him.

Having I truſt, if it was neceſſary, guarded you againſt the effects of thoſe addreſſes, which have been made to you on the part of the Traverſer, it is for me to ſtate to you, that there are two queſtions for your conſideration—1ſt, whether this libel has been publiſhed by the Traverſer?—Much of your time, and that of the Court, has been taken up in the diſcuſſion of a queſtion, which really did not ariſe—I never was ſo aſtoniſhed as when I heard gentlemen of abilities and experience contend, that there was no evidence for your conſideration with regard to the fact of publication.—It has been proved, that in purſuance of the direction of the act for preſerving the liberty of the Preſs, an affidavit was made by a perſon aſſuming the name of *Peter Finerty*, and ſtating him to be the ſole proprietor of the paper, entitled *The Preſs*, and ſtating the place of publication. The purchaſe of the paper was proved to have been made in *Church-lane*—the place referred to by the affidavit. The paper was incontrovertibly identified by the teſtimony of two witneſſes. The Traverſer upon being arreſted in the very houſe referred to by the affidavit, avowed himſelf to be the printer and publiſher of *The Preſs*.—The law requires, that upon every change of property in a newſpaper, that the change ſhould be ſtated by affidavit,

and provides that unleſs ſo ſtated, the former proprietor ſhould be reſponſible. It reſts with you, Gentlemen, upon this evidence to determine, whether the Traverſer was the publiſher of the paper in queſtion. The able and reſpected authority of the Court will, I preſume to ſay, inform you, that the evidence is more ſatisfactory evidence than that which would ariſe from ſimilitude of hand-writing, and will inform you, that though the legiſlature, from the difficulty of obtaining ſatisfactory evidence againſt the publiſhers of libels—had ſubſtituted inferior, or ſecondary evidence—that it was never intended to exclude the beſt—you are to determine what weight it ought to have—and *proſecuting for the Crown*, I tell you, that if you have a rational doubt upon the point you ſhould acquit the Traverſer.

The evidence with reſpect to the queſtion of publication being diſpoſed of, it remains, 2dly, to be conſidered, whether the paper is a libel?—and if it be, with what intention it was publiſhed?—The learned Judge is bound by the law to give you his opinion, whether it is a libel or not—and having heard his opinion, the whole is open for your conſideration. The learned Counſel attempted to prove, that there was no charge made by the libel againſt the learned Judge, who preſided at the trial, and endeavoured to draw your attention from that part of the libel, and to confine its malignity to an higher authority. The firſt charge made by the indictment for this libel is—I am ſorry to addreſs you upon this ſubject—but I truſt that I am addreſſing men not yet hardened—and if I am, though I can judge of ——— I cannot deſcribe your feelings and indignation. The libel preſumes to diſparage the deciſion of an high and learned Judge, and twelve men upon their oaths, where the life of a fellow creature was in queſtion, and repreſents it a baſe and wicked murder, procured by perjury and terror.—What is become of the natural milkineſs of the *Iriſh* character?—Surely you are not ſo habituated to blood, by the numerous convictions for treaſon, conſpiracy and murder, which have been had, as to hear thoſe words without that prompt and honeſt indignation which declares them falſe, miſchievous and wicked. The libel ſtates:—"the death "of Mr. *Orr*, the nation has pronounced one of the moſt "ſanguinary and ſavage acts that has diſgraced the laws." "In perjury, did you not hear my Lord, the verdict was "given, perjury accompanied with terror, as terror has "marked every ſtep of your Government.—Vengeance

"was

" was to fall on thoſe who would not plunge themſelves in " blood."—What?—Gentlemen, have you heard of the trials for treaſon, murder, and for conſpiracy to murder?—If they have not blunted your feelings, you muſt feel that not only your country is diſgraced, but human nature blaſphemed by ſuch a publication. It is however but juſt to ſay, that the publication has not been defended.

Gentlemen, it has been well and truly remarked, that no man will without evidence charge another with an internal crime, whoſe own heart does not tell him of the poſſibility of its commiſſion.

The next paragraph in the paper to which I ſhall call your attention, (and in truth this is the only libel I ever read, in which there was not ſome colourable paragraph,) charges the LORD LIEUTENANT with a want of humanity, and it is a groſs, and monſtrous aggravation of the libel, to defend it in the manner you have ſeen—an attempt to miſlead the Jury and the people—But I truſt, that neither you or the public are to be miſled. The artifice is too obvious—an attempt has been made to ſubmit to your conſideration ſome affidavits alleged to have been made by ſome of the Jury, in *violation of that wholeſome principle of law, which will not ſuffer the verdict of a Jury given upon their oaths to be done away, or diſparaged by their ſubſequent affidavits.*—See what the conſequence would be—See whether your properties, your lives, or your honours would be ſafe, if that rule were to be departed from—You are acquitted this day by the verdict of a Jury—when are you to be at eaſe, if the law admitted of the impeachment of ſuch a verdict by ſubſequent affidavits—not in thoſe days of terror when conſpiracy and aſſaſſination are ſo buſily employed, and ſo fatally ſucceſsful. It is the eſtabliſhed principle of the law, not to receive the affidavit of a Juryman diſparaging himſelf and affirming his own turpitude—but *here*, you were told, the Jurors aſſumed the complicated guilt of perjury, and murder—there is no rule more eſſentially neceſſary to the peace, the welfare, and the happineſs of civilized ſociety. If ſuch affidavits were made, charity induces me to believe, that the unhappy makers did, under the influence of terror, aſſume the guilt of murder and perjury.

The libel ſtates that the Chief Governor denied mercy where it ought to be granted—Will any *man* entertain a doubt that it would be a libel to charge *him* with a verdict in

a caſe

a caſe of the ſlighteſt import againſt his oath?—and here is a charge of nothing leſs than wicked murder under the form of law, by a denial of mercy!—and yet you, Gentlemen, are told that this is not a libel.

The learned Judge has, in ruling a queſtion of evidence, ſtated to you, what the law of *England* has been to this day, and has informed you, that the great queſtion for your conſideration was:—"What was the object and intention of the publication?"—Great God! will any man who hears me, believe, that if for any one of thoſe unfortunate creatures that are from day to day brought to this bar, a cool and well founded application for mercy was made, that it would be denied? If any man ſo believes, I thank God, that he has formed my mind of different materials; and I feel a confidence, that I addreſs a Jury too juſt, and too conſcientious to impute to another that againſt which their own nature revolts—a denial of mercy, where it ſhould be granted!—It would be a murder, aggravated by perjury, for the Chief Governor is bound by an oath, as ſolemn and as binding as that under which you ſhall pronounce your verdict.

Gentlemen, you will recollect the occaſion which the Counſel took—not to ſpeak to the defence of the Traverſer, but to arraign the wiſdom of thoſe laws which the ſituation of the country rendered unfortunately neceſſary—and to talk of emancipation and reform, as if the defence of the unfortunate miſguided and deſerted Traverſer, was connected with ſuch Topics. How far his defence is connected with thoſe Topics upon which his Counſel has been ſo eloquent and loud, I leave you to determine—Is there a word in the libel looking towards emancipation or reform?—the blood of the *Plantagenets*—or what was offered to be proved at the bar of the Houſe of Lords in *Ireland* or the Houſe of Lords in *Great Britain?*—and yet upon theſe topics, how many long hours have been conſumed in a Court of Criminal Juriſdiction.

Gentlemen, the libel proceeds to ſtate that:—"It was no "compliment to the native clemency of a CAMDEN that "the preſent LORD LIEUTENANT was ſent into *Ireland.*" Here I ſay I am aſtoniſhed, that the name of CAMDEN did not reſtrain the malignant pen—that a grateful recollection of the name of CAMDEN, the firſt aſſertor of thoſe principles upon which the liberty of the Preſs at this day ſtands, did not arreſt the arm of calumny. *Character is like the*

Spear

Spear of Ithuriel. Falſehood can't bear its touch, and however diſguiſed returns to its own likeneſs. Did it not occur to the libeller, that the noble Lord did by his private life give the ſtrongeſt refutation of the calumny—a life diſtinguiſhed by an unaffected practice of all thoſe domeſtic virtues and endearing charities which ſo eminently diſtinguiſh the Royal Character, whoſe repreſentative he is—Believe me, Gentlemen, private virtue gives the beſt aſſurance of the faithful and conſcientious diſcharge of public truſt.

" Maſſacre and rape, military murder and terror"—Here are words calculated to diſturb the peace and tranquillity of the kingdom, and prepare the people, as the libel propheſies, and intends, to look for another Government—But the learned counſel has told you, that this libel is not at all converſant of the trial of Mr. *Orr*, and that it relates only to the ſubſequent department of juſtice. Your attention has been heretofore pointed to this part of the libel—*whoſe duty was it to ſtate to the Jury that the evidence was doubtful?* the duty of the Judge—*whoſe duty was it to ſtate to the executive, that he doubted?* the duty of the Judge—The libel has not in the rage of its calumny even ventured to aſſert, that the learned Judge entertained a doubt, though it baſely inſinuates that the Judge did recommend, and that the Chief Governor, deaf to the calls of juſtice, permitted an innocent man to be murdered by the forms of law. The libel proceeds, and admitting the truth of the evidence, queſtions the juſtice of the ſentence, and the learned counſel endeavours by the ſplendor of his diction, to palliate the enormity of a crime, which under the hypocritical cant of union and affection, has uſurped a dominion over credulous and ſuperſtitious ignorance, *and has made the ſacred obligation of an oath the bond and pledge of a wicked and alarming union, which threatens the very exiſtence of the nation—the ſubverſion of all order, and a depriviation of all the bleſſings of civilized ſociety.*

Gentlemen, I fear that I have intruded too long upon your time, yet it is neceſſary to treſpaſs on you a little longer—The learned Counſel who opened the caſe for the Traverſer has informed you, that it is the duty of the Jury to acquit, if there be any doubt upon their minds, and that it is the duty of the Judge, if he is diſſatisfied with the verdict, to recommend to mercy—I ſubſcribe implicitly to that doctrine, and whenever I had the honor to act in a judicial

judicial capacity, I never did in a capital case omit to call upon the Jury in the most emphatical terms, if they had any rational doubt operating upon their minds, to acquit—When I have disagreed with the Jury, or upon mature reflection, found a circumstance in favour of a convict, I have never omitted to recommend to mercy, and have always found the humanity of the Government anxiously concurrent with my recommendation—How wicked then is the libel, which makes the situation of a Judge unendurable by any man of humanity and honor.

" Let however *(states the libel)* the awful execution of Mr. " *Orr* be a lesson to all unthinking Juries, and let them cease " to flatter themselves, that the sobereſt recommendation " of theirs and of the *presiding Judge* can stop the course " of carnage"—If there be one part of the libel more wicked than another, it is this—It insinuates, that the Judge, who presided, had recommended the convict to Royal mercy, and that such recommendation was slighted—I ask, and I address a Judge of high and honorable character, Would he sit a moment upon a Bench, of which he is so great an ornament, if his recommendation was overlooked, and he was made the instrument of murder?—The libeller knew, that upon the premises which he assumed, it was the duty of the Judge to recommend—and to give colour to this calumny, he insinuates that he did, and that his recommendation was disregarded:—and here, Gentlemen, I call your attention to the facts resulting from the evidence of the learned Judge—He was asked, if the recommendation of *the Jury* had not been forwarded to the LORD LIEUTENANT—He freely told you it was—But it is fitting you should know, that Judges most distinguished for their humanity have ever considered the recommendation of a Jury (having upon their oaths returned their verdict Guilty after a solemn call to acquit if they entertained a doubt) as a mere extrajudicial effusion of amiable weakness—It is nothing more than telling the Judge—*We have done our duty on our oaths—do, my Lord, forget that you are upon your oath—and recommend him as an object of mercy—of whose guilt we entertain no doubt*—

—But was the noble Lord interrogated, whether HE had recommended to mercy—though the point of the libel, as against the LORD LIEUTENANT, is, that in slight of such recommendation, mercy was denied—and here, let me acknowledge the candor of the learned counsel, who has spoken

ſpoken to the evidence for the Traverſer—he has abandoned that falſe ſuggeſtion of the libel, and in all that he has ſaid, has not even inſinuated that the noble Judge did ever recommend.

But I much lament that the learned counſel recurred to ſome *Niſi Prius* addreſs, which could only tend to miſlead the ignorant—The law in caſes of libels wiſely forbids any enquiry into the truth or falſhood of the libellous matter, and the conſequences of this principle the learned counſel endeavours to repreſent as an admiſſion on the part of the proſecution of the truth of the libel—*was the enquiry ſtopped or reſiſted on the part of the proſecution? did not you, my Lord, call upon the counſel of the Traverſer to ſtate the object of their intended examination?—and upon their avowal of it—did you not, acting on your oath, and warranted by the unanimous opinion of the twelve Judges of* England, *ſtop the enquiry?*

Gentlemen, much has been ſaid, which though unconnected with the real object for your conſideration, might call for obſervation, if the lateneſs of the hour permitted—but there are one or two points in the addreſs of the learned counſel which I cannot paſs over—Would to God, for the honour of this our country, that it was not already too well known—that the private murder and aſſaſſination of ſuch as ſhould give evidence on the part of the crown, *that is, of the public peace*, was one ſavage feature of that ſyſtem of terror which was to be eſtabliſhed—how many who have given information have been aſſaſſinated?—The humanity of the legiſlature in the hope of ſtopping the progreſs of a crime of ſuch national diſgrace, by removing the motive, provided that the informations of ſuch as ſhould be murdered, or violently put to death, ſhould be received in evidence againſt the parties thereby charged—but their expectations were diſappointed, and day after day you have been ſickened with trials for murder or conſpiracies to murder—perſons who had given informations on the part of the crown—what a trial had you yeſterday, when three plans for the murder of a man, who had given informations, appeared to have been the ſubject of cool diſcuſſion; under theſe circumſtances, it requires an extraordinary degree of fortitude to come forward to give evidence—and if men, from a ſenſe of duty, returning and repenting virtue, come forward to diſcloſe and to prevent the completion of thoſe crimes of which they either participated or were informed—Are they

therefore to be left at the mercy of the poignard of the aſſaſſin?—Their evidence muſt ever be a ſubject for the pointed obſervation of the court, and the ſerious conſideration of the Jury—How many witneſſes have told you during this ſeſſion, to which your attention has been called, that to avoid aſſaſſination, they are obliged to change their lodgings nightly—to the evidence of ſuch men, as I conceive the learned counſel would diſtinguiſh as informers, you owe the detection of the high treaſon of *Jackſon*, planning and preparing for the invaſion of this country—and you have heard that the plot, ripe for the murder of the witneſs on the night preceding the trial, was defeated by accident. Of *Weldon*, and the others who attempted to ſeduce the army—and of many others, whom to avoid prejudgment, I will not make mention—yet to give colour to the libel, the protection of ſuch men, in the only place, where it is probable their lives would be ſafe from the aſſaſſins attack, is brought in charge againſt the Government of the country—every man in ſociety owes an honeſt informer protection—the perjured informer, as he merits, has the execration of all mankind—nor will the all ſeeing God, to whom the learned counſel has made ſo ſolemn an appeal, fail to enlighten and direct a cautious and humane judge, and a diſcerning jury to his detection.

There is but one other point to which I ſhall call your attention; the learned counſel has applied all his powers in the vain endeavour to repreſent a conduct, the genuine reſult of humanity and feeling, as cruel and wicked—trifling with the hopes and fears of the unfortunate ſufferer and his family. *Lord* YELVERTON has told you that the CHIEF GOVERNOR, quick and alive to the call of mercy, granted three reſpites to the unfortunate ſufferer; not for the purpoſe of agonizing him with hopes and fears, and daſhing with bitterneſs that cup which was not to paſs from him—no, the Chief Governor liſtened to the voice of humanity; he wiſhed, and who would not wiſh to find a juſtifiable way to mercy—*In rege parter erat*—thrice was the ſword of juſtice uplifted, thrice did his humanity, in hope of the appearance of ſome circumſtance to juſtify his interpoſition, arreſt it.

> Thrice juſtice urged—and thrice the flack'ning ſinews
> Forgot their office, and confeſs'd the man.

But juſtice at length prevailed, in ſtern deſpight of nature.

I concur

I concur with the learned Gentlemen in the panegyrics which they have pronounced upon the liberty of the Preſs, which conſiſts in laying no reſtraint upon publications, and not in freedom from cenſure, when criminal matter is publiſhed;—every man has a right to lay what ſentiments he pleaſes before the public—to forbid that, would be to deſtroy the freedom of the Preſs—but if he publiſhes what is improper, miſchievous, or illegal, he muſt take the conſequence of his own temerity; the will of individuals is free, the abuſe of that free will is the object of legal puniſhment; I agree with the learned counſel, that a free preſs is eſſential to the nature of a free ſtate, but by a temperate, legal and diſcreet uſe of it only can it be preſerved. *It is the conſtitutional centinel of the people—but by its licentiouſneſs, it may become the moſt dangerous traitor*—Let the freedom of the Preſs, and the purity of the trial by jury *continue for ever*—but ſacrifice not, I beſeech you, the ſanctity of the one, to the licentiouſneſs of the other. I have only to call upon you to conſider the ſacred duty you have undertaken, to conſider the publication, and if you can prevail upon yourſelves to believe, that it was not publiſhed with the motives imputed to it by the indictment, in God's name acquit the Traverſer; but if you believe that it was, I call upon you, as men of conſcience and of fortitude, regardleſs of inſinuations, and ſuperior to terror, whatever the conſequence may be, to find him guilty.

I have endeavoured to diſcharge my duty, I am confident you will diſcharge yours.

Mr. Justice Downes. *Gentlemen of the Jury*, I have to addreſs you after a very long trial—after much time has been miſpent in attracting your attention to points no way material to the cauſe—you have been amuſed by the diſplay of eloquence, but running wide of the matter before you. I ſhall endeavour to point out to you what are the objects of your conſideration, diveſted of all that irrelevant matter which has been addreſſed to you.

Gentlemen, the Priſoner at the bar is indicted for publiſhing a libel:—Firſt then, you are to conſider, whether he is the publiſher of the matter called a libel; and the intent with which it was publiſhed; and you are to conſider alſo, whether the innuendos, which are ſtated upon the record are well and properly applied?—that is nothing more,

than

than where in the record it is ſtated, that by any expreſſion the libel means ſuch a thing, or alluſions are made to the trial of *Orr*, or particular perſons—you are to conſider whether the matter bears that conſtruction which is imputed to it or not—Secondly, if you be of opinion, that the Priſoner publiſhed the paper and that the innuendoes are properly applied, you are to conſider whether the paper be a libel?—And if you are of opinion that it is, and that it was publiſhed with a malicious intent, am perſuaded that you know your duty too well, not to find him guilty.—But I agree with the counſel on both ſides, that if you have any rational doubt of the publication, you ſhould acquit him.

As to the firſt, whether the priſoner be the publiſher of the paper which is charged to be a libel, in my apprehenſion, there is ſtrong evidence for your conſideration. But it is for you to determine, whether it carries to your minds the force of conviction, that he was the publiſher of it.—You find a witneſs produced, who bought this paper at the office, No. 4, *Church-lane*—the paper ſo publiſhed is identified by the witneſs, and is traced from the time of the purchaſe to its production in Court—it was handed as the witneſs tells you, only to one perſon, the father of the witneſs, and the father ſwears it was not out of his ſight except when it was locked up by him, until he returned it to the ſon. Both of them were examined, and the ſon ſwears that the paper returned to him is the paper he bought and is the paper now produced. Therefore, if you believe that teſtimony, there is no doubt as to the paper being publiſhed at that houſe. See then, how Major *Sirr* connects it with the Priſoner. He arreſted the Priſoner at the Preſs Office, No. 4, *Church-lane*, and aſked him was his name *Peter Finerty*—he ſaid it was—he aſked him, was he publiſher of the paper called the Preſs?—he ſaid he was—upon that evidence of having admitted himſelf to be the publiſher of that paper a few days after the time when the paper produced was bought at that very place—whether that leaves any rational doubt, that he was the publiſher of the paper produced, you are to determine? I am not to give you any poſitive opinion as to that—it is not my province to interfere with that—I ſtate the evidence, which I think is evidence to go to you, and it is for you to determine upon your oaths, that queſtion, whether he publiſhed this paper? or whether you have any rational doubt upon it?—If you are

ſatisfied

ſatisfied that he did publiſh it, then ſee, whether it be a libel, and whether the innuendoes are properly applied?

Gentlemen, a late act of Parliament, as has been truly ſaid, has repoſed in you, the final deciſion of that queſtion. The ſame act of Parliament provides, however, that the Judge who tries the cauſe in caſes of libel, ſhall give his opinion to the Jury. Therefore it is incumbent upon me to ſtate my opinion upon this paper:—It is for you, either to follow or to reject it, as you find in your own conſciences you ought. But in the execution of that duty which the law impoſes upon me, I am bound to ſay this—that a paper which groſsly reflects upon the juſtice of the country, as this paper appears to me to do, is a libel. If this paper does endeavour to degrade the adminiſtration of juſtice in the minds of the people, as to me it appears to do, if you ſhall be of opinion, that ſuch is the tendency of it—ſuch a paper is in my mind a libel. If this paper repreſents to the public the trial and conviction of a man in the ordinary courſe Juſtice, as a foul conſpiracy againſt the life of an innocent man, to be effected by means of perjury in the witneſſes, and drunkenneſs in the Jury—if it repreſents (as to me it ſeems to do) thoſe diabolical means as uſed to procure the conviction of that man—if it brands with the name of murder the execution of a convicted criminal—judge for yourſelves, whether it is a libel or not, I can have no doubt it is.—If this does, as in my mind it appears to do, charge a Jury of the country with bringing in a verdict in a capital caſe in a ſtate of beaſtly drunkenneſs, it is a libel.—If this paper, as it appers to me to do, repreſents the conviction of a criminal in the ordinary courſe of juſtice, as the reſult of perjury in witneſſes, procured by reward—and of drunkenneſs in the Jury, I feel myſelf under that oath by which I act, bound to tell you, that is a libel.

If this paper, as in my judgment it appears to do, repreſents the King's Governor of this country as regardleſs of his duty—violating the ſacred truſt repoſed in him by his Majeſty, in a moſt important point—if it repreſents him ſo obdurate to the impreſſions of juſtice or mercy, as to ſuffer a convict to be executed, knowing him to be innocent, if it deſcribes the LORD LIEUTENANT as diſregarding the recommendations of the Judges and Juries who may try priſoners—if this paper holds out to the public that he would pay no manner of attention to ſuch circumſtances,

but

but that he would knowingly ſuffer an innocent man to be executed, there can be no doubt, that it is a moſt flagitious libel.

Gentlemen, I have made theſe obſervations upon this paper. Whether they are juſt, or ſatisfy you, as they do me, that this paper is a libel, is for your good ſenſe to determine.

Gentlemen, having ſtated ſhortly theſe matters, for in truth, I am not diſpoſed to take up much of your time, the caſe appearing to be ſimple and plain, notwithſtanding the many hours it has taken up.—One other obſervation I will make —if it ſtrikes you in the ſame way, I feel myſelf compelled to call this paper a libel. If this appears to you, as it does to me, to put this caſe, that even ſuppoſing the evidence againſt *Orr* to have been true, then this paper inſinuates and endeavours to cauſe it to be believed, that the offence was in itſelf no crime—that even ſuppoſing the evidence to have been true, he was executed for a meritorious act—With what view could that be held out but to irritate the public mind—to caſt unjuſt cenſure upon the law, the government and the adminiſtration of juſtice?—That compels me to ſay it is a libel; and if theſe obſervations ſtrike you as they do me, the indictment has introduced the libel truly upon the record, when it ſays, that the defendant "deviſing and intending the peace and public "tranquillity of the kingdom to diſturb, and to bring the "trial of *William Orr*, and the verdict had in the due "courſe of law into hatred, contempt, and ſcandal, and "to perſuade the ſubjects to believe, that the trial was "unduly had---and that *Orr* undeſervedly died—that the "LORD LIEUTENANT ought to have extended pardon "to him, and that in not extending it, he acted inhumanly, "wickedly and unjuſtly, and in a manner unworthy of the "truſt committed to him by the King in that behalf"—did publiſh this libel.

Gentlemen, If the obſervations I have made upon the paper, which will go up to you, and which you will conſider as you would in your cloſets—If, I ſay, theſe obſervations are founded, this charge againſt the Priſoner is fully proved.

Gentlemen, ſuffer me to ſay a word with reſpect to the intent charged againſt the printer, in publiſhing the paper —Where no evidence is given to ſhew that the publication was innocent, as where a man intending to give a

letter

letter to another, pulls a libel out of his pocket by miſtake, or in various other caſes which may be imagined of a publication of a libel with perfect innocence:—in all ſuch caſes if it does not appear on the evidence for the crown, that the act of publication was innocent, it is incumbent upon the party accuſed, to ſhew thoſe circumſtances, from whence the innocence of the act of publication is to be inferred, and where that is not done, where are you to look for the intent of the publication, but from the paper itſelf?—it is not incumbent upon the crown, and in many caſes it would be impoſſible for the proſecutor, to ſhew any peculiar malicious intent diſtinct from the natural inference to be drawn from the paper itſelf. He muſt reſt upon the paper itſelf; and if the jury look upon it, and can find a malicious intent there, it is ſufficient for their verdict. In my apprehenſion, this doctrine ought not to ſurprize an honeſt and a ſenſible jury; it has been always held in every court, whoſe proceedings I have had an opportunity of obſerving. It does no injuſtice: it is ſuppoſing no more, than that a man is conuſant of his own acts. But he *knows* what he *does*, and that he *intends* to do what he actually *does*. If a man publiſh a work of wit and humour, in other reſpects innocent, it may be inferred from the work itſelf, that his intention was to amuſe. If he publiſh a work of ſcience, it may be inferred that his intention was to inform.—So if the publication does in fact calumniate and defame, may it not with equal juſtice be inferred from the libel, that he publiſhed it with an intent to calumniate and defame. No other intent is neceſſary to be ſhewn by the crown, but that reſulting from the paper itſelf; no circumſtances being ſhewn by the Priſoner which can vary that intent.

Gentlemen, there is another part of this caſe to which I think it my duty to advert. You will recollect, that the counſel for the Priſoner ſtated a maſs of matter, going through the whole of the libel, and ſtating that he would produce evidence of it, reflecting upon that trial of *Orr*, who has been convicted below—facts which he aſſerted would go to prove the libel to be true, and reſting the defence of his client upon that publication. Gentlemen, I did, as it was my duty, reject ſuch evidence, becauſe it has been immemorially the common law of theſe Kingdoms, that ſuch evidence is immaterial, and forms no manner of defence—and it is not in the power of any

lawyer

lawyer to trace the time when the law was otherwiſe. It has been uniformly ſo conſidered, even down to the time when the Bill was before the two Houſes of Parliament in *England* from whence the act of Parliament under which you now act was copied, and this rule of law is unchanged by that act of Parliament. At that time various queſtions were put to all the Judges of *England* by the Lords, for the purpoſe of aſſiſting the legiſlature in framing that bill, and I have already read one of the queſtions put to them, it was this—"Is the truth or falſehood of the written or "printed paper material, or to be left to the jury upon the "trial of an indictment or information for a libel;—or "does it make any difference in this reſpect, whether the "epithet *falſe* be or be not uſed in the indictment or in-"formation?" The judges anſwered that queſtion unanimouſly; and upon that anſwer I ground my opinion, knowing that it is founded upon the law of the land. The anſwer is in theſe words, "The queſtion conſiſts of two "branches, our anſwer to the firſt branch of this queſ-"tion is that the truth or falſehood of a written or printed "paper is not material, or to be left to the jury on the "trial of an indictment or information for a libel. We "conſider this doctrine as ſo firmly ſettled, and ſo eſſentially "neceſſary to the maintenance of the King's peace, and "the good order of ſociety, that it cannot now be drawn "into debate."

The Judges have ſaid, that they conſider that doctrine eſſentially neceſſary to the maintenance of the King's peace, and the good order of ſociety—And ſo it is—What is the reaſon of that rule of law?—The meaning and reaſon of it is, (for there is no rule of law, that is not founded in good ſenſe and plain reaſon,) that no man ſhall be accuſed of crimes, but by due courſe of law—that there ſhall be no temptation held out to a violation of the public peace, by calumniating perſons in libels, inſtead of bringing thoſe perſons to anſwer in the ordinary courſe of juſtice—That a man ſhall not be cruelly puniſhed, and without a trial, as in fact he is by a libel charging him with crimes. And the reaſon of the rule is ſtrongly illuſtrated by this—that the libel would itſelf operate as an indictment, if the publiſher of it were proſecuted, and if the libel charged a crime, ſuppoſe murder, the inquiry into the truth of it would be had before a Court, and jury, who could not puniſh it if the charge were found to be true—and if any man thought

thought fit to libel the verdict of a jury, or the decisions of a Court of justice, is that verdict, or are those decisions to be tried here collaterally upon an indictment for the libel?—Is the conduct of the Judge to be brought into discussion here, or is such a libeller to be left unpunished?—The court which sits to try the libeller is not competent to try alleged misconduct in the Government. There are proper Courts for that purpose—Parliament may enquire into such a case—But no Jury or Court inferior to Parliament can inquire into it, at least in this form. If there be any ground for accusation, the party ought to proceed in the due course of law. But he is not to calumniate the administration of Justice—the conduct of Juries, or Judges, or the conduct of the King's Governor, and to expect to put that Jury, the Judges, or Chief Governor upon the defence here, to prove the falsehood of the charge.

Therefore neither the truth nor falsehood of the libellous matter is allowed here to be enquired into. But you are to determine for yourselves, upon the ground I have already stated, whether or no this paper does malevolently calumniate the proceedings had upon that trial, and afterwards; and if you believe it does, and that malice led to the publication of it, then you will of course find the Defendant Guilty:—but if you consider it a fair, candid discussion of public affairs, not with the intent I have mentioned, in that case you will acquit the Prisoner. If you have any rational doubt, to be sure, you will acquit him. But if you are of opinion, that it is a libel of that import which I have stated, you ought to convict him.

Gentlemen, much has been said, and great exertions were made, by Counsel, to shew, that the facts alleged in that libel were well founded. I have already stated, why I rejected the evidence offered. But it is said, this is called in the indictment a *false* libel, and therefore that it is matter of evidence, whether it be true or false. Gentlemen, that is not the meaning of the term in the indictment.—Gentlemen, I have the same authority for saying, that is not the meaning of the term; nor will it, though called *false*, make the truth or the falsehood matter of enquiry. "The "epithet *false*, say the Judges of *England*, in the answer I "have alluded to, is not applied to the propositions con-"tained in the paper; but it is applied to the aggregate "criminal result—*Libel*; we say *falsus libellus* a false libel, "as we say, *falsus proditor*, a false traitor, in high treason." This is the highest authority in the law upon this subject—

and the ſame authority tells us, that whether the epithet *falſe* be, or be not uſed in the indictment, can make no difference in reſpect of the materiality of the truth or falſehood, or its being left to the Jury upon the trial.

Gentlemen, you will conſider this caſe, and I am ſatisfied your verdict will be conformable to your duty.

The Jury retired for a ſhort time, and brought in a verdict, GUILTY.

Counſel for the Proſecution.	Counſel for the Traverſer.
Mr. Attorney General,	Mr. Curran,
Prime Serjeant,	Fletcher,
Solicitor General,	M'Nally,
Worthington,	Sheares,
Townſend,	T. Sheares,
Ridgeway,	Sampſon,
Agent, Mr. Kemmis.	Orr,
	Agent, Mr. Dowling.

Saturday, December 23d.

This day, Mr. *Finerty* was put to the bar, and before ſentence prouounced, begged permiſſion to ſay a few words to the Court, which being granted, he proceeded as follows:

My Lord,

I hope your Lordſhip will take into conſideration the length of time I have been confined. I have been in cloſe cuſtody for eight weeks. I admit the charge was bailable; but being remote from my friends, and in humble life, it became impoſſible for me to procure bail to the amount required.

My Lord, I always underſtood that guilt conſiſts in the mind, and my heart abſolves me fully from any criminal intention.

My Lord, I admit the publication is very groſs:—but it was received in the letter-box in the morning—it was impoſſible for me from the extent of the buſineſs to attend to every thing—the letter was received in the letter-box, and carried by a clerk, who attended earlier than I did,

to

to the *Preſs-Office*; it was there inſerted, and the impreſſion was worked off before I ſaw it. Upon examination, I found it exceptionable, and upon remonſtrating with the author, he told me, there were documents to eſtabliſh the ſtatement, and they were in Court to prove the truth of the allegations.

I had thought, my Lord, that truth could not be a libel, I have been ſince told, that the truth of a paper is not even an extenuation. That rule, my Lord, ſhall regulate my conduct hereafter. But before, I had thought, that truth was a juſtification, or at leaſt an extenuation of a ſtatement.

With regard to the imputation, that I was the tool of a party, I do aſſure your Lordſhip moſt ſolemnly, that I am totally unconnected with any party, or any individual, whoſe views are hoſtile to the government, and I am as far as any man from putting my name to a paper, that could injure the peace of the country, for which I am as anxious as any man can be.

My Lord, about three weeks ſince I was brought from the gaol to Alderman *Alexander*'s, by what authority I know not, at ſeven o'clock in the evening, where it was propoſed to exonerate me from the proſecution, if I would betray the author, and it was endeavoured to extort other ſecrets connected with *The Preſs*, which ſhould not be extorted from the breaſt of any honeſt man, a propoſal which every man of common honeſty, or common pride muſt ſpurn at.—I know not how it would contribute to the dignity of the national character to add me to the liſt of informers—They may be uſeful; but it ill ſuits with the education which I have received, and the feelings ariſing from that education, to initiate myſelf in that capacity.—I have experienced conſiderable hardſhip—every menace and promiſe has been held out to me to become an informer; and a degree of rigour has been exerciſed over me, in general, which the offence itſelf could not be ſuppoſed to deſerve, though it might be meant to extort a diſcovery. My Lord, I was taken to the Magiſtrate's office in the evening, and held there until two in the morning—About two in the morning I was ſent under an eſcort to Kilmainham—was refuſed admittance there—was taken back to the ſame office, and remained there until three o'clock the enſuing evening, undergoing a moſt extraordinary inquiſition.

My

My Lord, I have nothing more to add.—I was threatened with a ſpecies of puniſhment which my mind will not ſuffer me to utter, and more terrible than death to me who have been educated in the principles of honeſty, and which I could not perſuade myſelf to meet. I ſhall not comment upon the perſon, or authority who could preſume to prejudge your Lordſhip's ſentence, or the verdict of a Jury—Becauſe, then, my Lord, the law ſuppoſed me innocent; though ſome were found to pronounce a ſentence upon me, as if I were actually convicted.

As I feel my mind incapable of little paſſions, I declare, I cordially forgive them their treatment. I am a friend to all mankind, and am incapable of acting, or writing to the prejudice of any individual in the community.

Feeling, as I ſolemnly aſſure your Lordſhip, I do, that there was no guilt in the intention of that publication, and that intention alone conſtitutes guilt, I am free from criminality.

I hope your Lordſhip will take theſe circumſtances into your conſideration—that they will weigh with your Lordſhip's humanity—With regard to the ſentence, whatever it may be, I hope I have religion and firmneſs to bear it:—Becauſe I am perfectly innocent, and I ſhall meet your ſentence, whatever your Lordſhip may direct.

Mr. *Juſtice* DOWNES. *Peter Finerty*, you have been found guilty by a Jury of your country of publiſhing a moſt ſeditious libel. The indictment, upon which you were tried, charged you with publiſhing that libel, deviſing and intending to moleſt and diſturb the peace and public tranquillity of the kingdom, and to bring a trial, a verdict, and the execution of a criminal, who had been tried and executed in the due courſe of law, into contempt, hatred, and ſcandal among the King's ſubjects. It charges you with deviſing to cauſe the King's ſubjects to believe, that the trial of *William Orr*, convicted at *Carrickfergus*, was unduly had, and that the criminal undeſervedly died, and that the LORD LIEUTENANT ought to have extended the King's mercy to him, and did not, and that in not extending ſuch mercy he acted unjuſtly, wickedly, inhumanly, and unworthy of the truſt committed to him.—With thoſe intentions, the Grand Jury charged that libel to have been publiſhed, and with thoſe intentions a Petit Jury of your country have found you did publiſh it.

At

At the bar, you now ſpeak of innocence of intention, and how?—You have publiſhed a libel upon the adminiſtration of juſtice, and you ſay that you have done it innocently—On your trial there was no evidence given of any circumſtance in the act of publication that could have made it innocent —You ſtate from the bar, that it was put into your letter-box—that it was carried by a clerk to the printing-office, and worked off without your knowing it. If thoſe circumſtances could palliate your offence, you gave no evidence of them—and if you had, I fear they could have availed but little. A printer is not to ſcatter poiſons among the people—he is not to ſcatter arrows and death around him, and juſtify himſelf by ſaying, that he did not attend to buſineſs himſelf, but left it to his clerks. —It is no manner of juſtification, nor is there any evidence to ſhew that it ſo happened.

You ſpeak of your intentions, and of your attachment to the conſtitution. How are the intentions of any man to be diſcovered but by his acts?—A Jury has found you guilty of endeavouring to degrade the adminiſtration of public juſtice—to diſgrace the trial by jury—to vilify the judges, and to traduce the government of the country—they have found you guilty of endeavouring by this libel to make the public believe, that the adminiſtration of juſtice is nothing but oppreſſion to them—that no mercy can be had from thoſe in whom the power of mercy is placed.—When your libel does all this, who ſhall believe that your intentions were not correſpondent to your acts, and that when you did vilify and calumniate the adminiſtration of juſtice and the Government of the country, who ſhall believe that you did not intend to vilify and calumniate them?

You ſtate, that your intentions were pure—that documents were laid before you to prove the truth of the facts——

Priſoner. Subſequent to the publication, my Lord.

Mr. *Juſtice* DOWNES. Is a printer to try the adminiſtration of the country upon what he chuſes to conſider as documents? Is he to excite the indignation of the people againſt their Governors upon what you deem to be ſufficient documents? Are you to make charges againſt the King's Lieutenant—to accuſe him of criminality in his office, and to ſhake the peace and happineſs of the country

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to its foundation, and then to juſtify yourſelf by alleging that your intentions were innocent, and that you ſuppoſed the documents in your poſſeſſion were ſufficient,—ſufficient for what? to juſtify you in vilifying the adminiſtration of juſtice in all its branches, and in every ſtage of its proceeding—It is impoſſible that the man uttering ſuch an excuſe can feel that he can perſuade any man living to believe it.

You have ſaid, that offers of pardon were made to you —or of favour, on giving up the author of this libel, and you have expreſſed an high degree of ſcorn at being deſired to aid the public in diſcovering the original criminal. You have, with a ſhew of falſe ſpirit, affected to conſider and to hold out to this audience, thoſe men who aſſiſt in detecting crimes, as criminal themſelves—A falſe ſentiment which I truſt no man can adopt.

What offers were made you, I know not; none appeared to the court. If any were made, they were probably the dictates of a merciful diſpoſition; and yet your libel ſtates that mercy has no exiſtence in the government of this country. I do not find any circumſtance ſtated by you at the bar in mitigation of your puniſhment that can warrant me in letting it affect the judgment of the court, other than one fact, that you have been in priſon for eight weeks. That fact, ſo far as it goes, will be taken into conſideration, and the impriſonment I ſhall order, will be directed to be computed from the time you were firſt arreſted. So far as that goes, and that appears the only circumſtance that can in any degree tend to any ſort of mitigation, you ſhall have the benefit of it. You have been found guilty by a jury of the fact, which you now admit at the bar, of publiſhing a libel, which attacks the very exiſtence of ſociety, by endeavouring to draw into contempt the adminiſtration of juſtice. It is obvious to every man, that if you, or the writer of this libel ſhould be able to perſuade the people, that juſtice is not duly adminiſtered to them—there can be no happineſs, no peace in the country; you have vilified the trial by jury—that mode of trial, for which our anceſtors and ourſelves have been at all times the admiration of the world. You have repreſented the execution of a criminal in the due and ordinary courſe of juſtice, as an horrid murder, perpetrated by corrupt perjury in the witneſſes, and drunkenneſs in the jury!—Can any man doubt of the wicked tendency of ſuch an accuſation,

ſation, or of the intentions of thoſe by whom it is made? You have by this libel further repreſented, that a man, whoſe conviction you ſtate to have been ſo obtained, has been ſuffered by the LORD LIEUTENANT to be executed, he actually knowing his innocence!—Is it poſſible to ſtate a charge of a more atrocious nature?—Is it poſſible to conceive that any man, much leſs a man in his high ſtation, would be ſo deaf to the calls of juſtice, ſo ſteeled againſt every honeſt, and honourable feeling, as knowingly to ſuffer an innocent man to be put to death by form of law?—It is an atrocity beyond all imagination!—It is impoſſible to believe it—No man, not even the writer of that libel does, or can believe it. Your libel equally attacks the conduct and character of the judge who tried the criminal; for it repreſents to the public, that this man has been executed upon a verdict obtained by drunkenneſs, reward and perjury—Can it be ſuppoſed, or is there any man acquainted with the proceedings in criminal courts who can believe, that if the verdict were ſo obtained, the judge would not have recommended the Priſoner to mercy?—And if the judge had recommended to mercy, has it ever been heard by any man living, that mercy was ever refuſed to ſuch a recommendation?—Is there a man, who ever heard, that a judge who tried a Priſoner, had recommended him to the LORD LIEUTENANT for pardon, and that pardon was refuſed?—never; no judge ever yet recommended a priſoner for mercy, where mercy was refuſed by the preſent or any other Chief Governor of this country. In the inſtance of *Orr*, ample time was given by three different reſpites to examine into his caſe. If the learned judge who tried the priſoner, had thought it conſiſtent with his duty to recommend him, there is no man in his ſituation that would not have recommended—The learned judge would have felt peculiar delight in recommending to mercy, if he thought it conſiſtent with his duty—and if he had recommended, there is no man can believe that his recommendation would have been refuſed. Mercy never is refuſed in any inſtance, where it ought to be extended; and to extend it where it ought not, is cruelty to the public.

I have thus adverted to the general courſe which your libel has taken. If it has been ſucceſsful enough to convince any one man, that ſuch an atrocity as it alleges, was committed, and that the adminiſtration of juſtice is in

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the ſtate that your libel repreſents, that man is a worſe ſubject than he was before; and if the body of the people can be perſuaded to believe ſuch a repreſentation, it would tend to deſtroy the whole frame of our conſtitution, and the peace and happineſs of ſociety. But your libel not content with reviling the adminiſtration of juſtice, has had the audacity to attack the law of the land, and to juſtify the crime for which *Orr* was convicted; and even putting it, as the libel does, upon the ſuppoſition, that the verdict was true, and the proceedings in the due and ordinary courſe, this libel affirms—that the crime of which *Orr* was convicted, was no offence—that it was an act innocent, even meritorious—and what was that act?—The adminiſtering an unlawful oath of that deſcription from whence every evil which this country now deplores has ariſen—an oath purporting to bind men to be of a ſociety formed for ſeditious purpoſes—an oath by which the perſon taking it, ſurrenders his liberty to the control of others, of whom he knows nothing—an oath to be of a ſociety, appearing in abundant inſtances in evidence upon judicial trials, to have been formed for the deſtruction of the government, and of the country, and to aid the common enemy of the empire. From that oath have ſprung innumerable robberies, the moſt atrocious cruelties, horrid conſpiracies to murder—murder the moſt ſavage and barbarous, and treaſons which threaten to ſhake the ſtate—Theſe have been the fruits of that oath which your libel juſtifies, and calls an oath of *Charity*, of *Union*, of *Humanity*, and of *Peace!*——There ſtand behind you, at this moment, many unhappy men, waiting the dreadful ſentence of the law, which that oath has provoked againſt them, and who have by that oath ſurrendered their free will, and have given up the guidance of their actions to deſperate men, and under their influence, committed crimes which before they had no conception of.

And yet this is the offence which this libel not only calls innocent, but even meritorious!—When a libel has all this horrid tendency which I feel this has, and which every thinking man muſt obſerve, muſt be convinced of, it does call upon the Court for a ſevere puniſhment, and it is my duty to pronounce that ſentence, which the law does enforce, and which it does not become me to alleviate.

That

That ſentence is, that you do ſtand in and upon the pillory for the ſpace of one hour—that you be impriſoned for two years to be computed from the 31ſt day of *October*, 1797,* and until you pay a fine of 20 *l.* to the King—and that you give ſecurity for your future good behaviour for ſeven years from the end of your impriſonment, yourſelf in 500 *l.* and two ſureties in 250 *l.* each.

* The day upon which the Priſoner was arreſted.

FINIS.

That fentence is, that you do ſtand in and upon the pillory for the ſpace of one hour—that you be impriſoned for two years to be computed from the 31ſt day of October, 1757,* and until you pay a fine of 200 l. to the King—that you give ſecurity for your future good behaviour for ſeven years from the end of your imprifonment, yourſelf in 500 l. and two ſureties in 250 l. each.

* The day upon which the Publiſher was tried.

FINIS.